ISSN 2587-4365
E-ISSN 2587-4373

LEGEA ŞI VIAŢA

Publicaţie ştiinţifico-practică

LAW AND LIFE

Scientific-practical publication

ЗАКОН И ЖИЗНЬ

Научно-практическое издание

Revista este indexată în:

Chișinău • 2026

Se editează din ianuarie 1991

Tipul B
DECIZIA
Consiliului de conducere al ANACEC nr. 7 din 06 martie 2025

Asociaţi: Curtea Constituţională, Curtea Supremă de Justiţie, Asociația Judecătorilor din Republica Moldova, Institutul de Ştiinţe Penale şi Criminologie Aplicată, Institutul de Cercetări Juridice și Politice al Academiei de Ştiinţe a Moldovei, Universitatea de Stat ,,B.P. Hasdeu" (Cahul), Universitatea ,,Spiru Haret" (Constanţa), Universitatea ,,Petre Andrei" (Iaşi)

COMITETUL ȘTIINȚIFIC

Redactor-şef: prof. univ., dr. **Radion Cojocaru**

Redactor-şef adjunct: conf. univ., dr. **Vitalie Ionașcu**

din străinătate:
prof. univ., dr. **C. Voicu** (București, România); prof. univ., dr. **Gh. Popa** (București, România); prof. univ., dr. **G.-M. Țical** (Constanța, România); prof. univ., dr. **C. Peța** (Constanța, România); prof. univ., dr. **N.-E. Hegheș** (București, România); prof. univ., dr. **W. Plywaczewski** (Olsztyn, Polonia); conf. univ., dr. **E. Krzysztofik** (Lublin, Polonia); conf. univ., dr. **T. Kurylo** (Szczeciń, Polonia); conf. univ., dr. **C. Andruş** (București, România); dr. **M. David** (Constanța, România); conf. univ., dr. **G.-A. Nicula** (Galați, România); dr. **M.-G. Stoian** (București, România); prof. univ., dr. **O. Krișevici** (Kiev, Ucraina); conf. univ., dr. **A. Politova** (Mariupol, Ucraina).

din Republica Moldova:
prof. univ., dr. **Iu. Larii**; prof. univ., dr. hab. **V. Cușnir**; conf. univ., dr. hab. **D. Ostavciuc**; conf. univ., dr. hab. **S. Cornea**; prof. univ., dr. hab. **Gh. Costachi**; prof. univ., dr. hab. **Gh. Gladchi**; conf. univ., dr. hab. **B. Glavan**; prof. univ., dr. hab. **S. Brînză**; prof. univ., dr. **V. Bujor**; prof. univ., dr. **V. Stati**; prof. univ., dr. **Șt. Belecciu**; prof. univ., dr. **T. Osoianu**; prof. univ., dr. **Al. Mariț**; prof. univ., dr. **V. Ursu**; prof. univ., dr. **M. Gherman**; conf. univ., dr. **Iu. Odagiu**; conf. univ., dr. **I. Erhan**; conf. univ., dr. **Ig. Trofimov**; conf. univ., dr. **C. Rusnac**; conf. univ., dr. **V. Rusu**; conf. univ., dr. **V. Chiriță**; conf. univ., dr. **M. Pavlencu**; conf. univ., dr. **Gr. Ardelean**; conf. univ., dr. **A. Nastas**; conf. univ., dr. **V. Jitariuc**; conf. univ., dr. **I. Odinokaia**; conf. univ., dr. **S. Pilat**; dr. **I. Slisarenco**.

Secretar științific:
drd. **Ig. Soroceanu**

COLEGIUL TEHNIC DE REDACŢIE

Ruslan Condrat, redactor-șef tehnic
Iulian Bogatu, redactor
Nicolae Jantîc, redactor
Angela Pareniuc, traducător
Ala Antoniuc, specialist principal

Adresa redacţiei:
str. Gh. Asachi nr. 21, mun. Chişinău, MD - 2009, Republica Moldova
© Legea şi Viaţa
pagina web: www.academy.police.md

Redacția revistei „Legea și Viața" nu-și asumă răspunderea pentru nerespectarea de către autorii materialelor a reglementărilor înscrise în legislație cu privire la drepturile de autor. În caz de plagiat – parțial sau integral – întreaga responsabilitate, atât juridică (penală, contravențională, civilă), cât și deontologică, îi revine în exclusivitate autorului.

De asemenea, articolele apar în regia autorilor, ei fiind responsabili și pentru conținutul inclus în ediția specială a revistei.

ACADEMIA „ȘTEFAN CEL MARE”
ȘCOALA DOCTORALĂ
„ȘTIINȚE PENALE ȘI DREPT PUBLIC”
REPUBLICA MOLDOVA

ACADEMIA DE POLIȚIE
„ALEXANDRU IOAN CUZA”
ROMÂNIA

UNIVERSITATEA
„DUNĂREA DE JOS”
DIN GALAȚI
ROMÂNIA

CONFERINȚA ȘTIINȚIFICĂ INTERNAȚIONALĂ

PREVENIREA ȘI COMBATEREA CRIMINALITĂȚII: PROBLEME, SOLUȚII ȘI PERSPECTIVE

Ediția a VIII-a

30 aprilie 2026

INTERNATIONAL SCIENTIFIC CONFERENCE

CRIME PREVENTION AND COMBATING: PROBLEMS, SOLUTIONS AND PERSPECTIVES

8th Edition

APRIL 30th, 2026

Chișinău
iunie • 2026

SCIENTIFIC COMMITTEE / COMITETUL ȘTIINȚIFIC

Chairman/ Președinte:

Dinu OSTAVCIUC, Prof, PhD Hab. Rector, „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0001-5317-3296

Members / Membri:

Cătălin ANDRUŞ, Assoc. Prof., PhD., Rector, „Alexandru Ioan Cuza" Police Academy – National College of Internal Affairs, Bucharest, Romania, ORCID: 0009-0009-5308-7035

Constantin RUSNAC, Assoc. Prof., PhD., First Vice-Rector for Studies and Quality Management, „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0002-8122-7711

Iurie ODAGIU, Assoc. Prof., PhD.,Director, Institute of Scientific Research and Comparative Law, „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0002-2474-5299

Valeriu CUŞNIR, Prof. Univ., PhD Hab., Corresponding Member, Academy of Sciences of Moldova (ASM); Corresponding Member, Romanian Academy of Legal Sciences, ORCID: 0000-0003-1338-5993

Serghei BRÎNZA, Prof., PhD Hab., Moldova State University, Republic of Moldova, ORCID: 0000-0001-5937-3926

Iurie LARII, Prof., PhD., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0003-4277-535X

Radion COJOCARU, Prof., PhD., Director, Doctoral School „Criminal Sciences and Public Law", „Stefan cel Mare" Academy of MIA, Republic of Moldova, ORCID: 0000-0002-3809-7392

Oleg RUSU, Assoc. Prof., PhD., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0003-4772-8325

Yevhen PYSMENSKYY, Prof., PhD, Vice-Rector for Research, King Danylo University, Ivano-Frankivsk, Ukraine, ORCID: 0000-0001-7761-7103

Augustin LAZĂR, Prof., PhD., „Titu Maiorescu" University of Bucharest, Romania, ORCID: 0000-0001-9115-6868

George-Marius ȚICAL, Prof., PhD, Dean, Faculty of Psychology, Behavioral and Legal Sciences, „Andrei Şaguna" University, Constanta, Romania; Full Member of the Academy of National Security Sciences, Romania, ORCID: 0000-0002-6123-6821

Vitalie IONAŞCU, Assoc. Prof., PhD., Dean, Faculty of Law, Administration, Public Order and Security, „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0001-6976-615X

Vitalie JITARIUC, Assoc. Prof., PhD.,PhD, Dean of the Faculty of Law

and Public Administration, "Bogdan Petriceicu Hasdeu" University Center in Cahul, Technical University of Moldova. Associate researcher at the „Acad. Andrei Rădulescu" Institute of Legal Research of the Romanian Academy.Member of the Forensic Association from Romania. ORCID ID: 0000-0002-9361-4460.

Mariana Carmelia BĂLĂNICĂ DRAGOMIR, Assoc. Prof., PhD., Dean, Cross-Border Faculty, „Dunarea de Jos" University of Galati, Romania

Sorin Stelian CĂPĂȚÎNĂ, Assoc. Prof., PhD., „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania, ORCID: 0009-0006-0687-6515

Tudor OSOIANU, Prof., PhD., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0003-1506-4501

Vitalie STATI, Prof., PhD, Moldova State University, Republic of Moldova, ORCID: 0000-0003-1371-4961

Boris GLAVAN, Assoc. Prof., PhD Hab., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0002-3838-4308

Veaceslav URSU, Prof., PhD., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0002-0696-4391

Ştefan BELECCIU, Prof., PhD., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0000-0002-0786-8713

Dianu GORDILĂ, PhD., „Stefan cel Mare" Academy, Republic of Moldova, ORCID: 0009-0003-6565-5198

Pasquale POLICASTRO, Prof., PhD Hab., Szczecin University, Poland, ORCID: 0000-0002-8124-8758

Edyta KRZYSZTOFIK, Assoc. Prof., PhD., The Catholic University in Lublin, Poland, ORCID: 0000-0001-6160-9600

Verginel LOZNEANU, Prof., PhD., „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania, ORCID: 0009-0001-1898-5552

Vasile LUHA, Prof., PhD., „1 Decembrie 1918"University of Alba Iulia, Romania, ORCID: 0000-0003-1671-7850

Irina BAKHAYA, Assoc. Prof., PhD., „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania, ORCID: 0009-0006-0972-8729

Viorica-Ştefania MOLDOVAN, Assoc. Prof., PhD., „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania, ORCID: 0009-0005-4612-9103

Emil-Răzvan GÂTEJ, PhD., Lecturer, „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania, ORCID: 0009-0001-4456-3863

Ioan LAZĂR, Prof., PhD., „1 Decembrie 1918"University of Alba Iulia, Romania, ORCID: 0000-0001-8329-2106

Raul Felix HODOŞ, Assoc. Prof., PhD., „1 Decembrie 1918"University of Alba Iulia, Romania, ORCID: 0000-0001-8500-135X

Andreea Nicoleta DRAGOMIR, PhD, Lecturer., „Lucian Blaga" University of Sibiu, Romania, ORCID: 0000-0002-9358-8098

Mihaela-Corina BUCUR, Prof., Fundeni Post-Secondary Medical School, Bucharest, România; Med Manager, „Asanka Sante" Medical Clinic, Research Projects, ORCID: 0000-0001-8904-0436

Nataliia GLYNSKA, Prof., PhD, Academician Stashis Scientific Research Institute for the Study of Crime Problems, National Academy of Law Sciences of Kharkov, Ukraine, ORCID:0000-0001-5835-3798

Olena FEDORENKO, Prof., PhD., Kharkiv National University of Internal Affairs, Ukraine, ORCID: 0000-0003-4948-9524

Oleksandr MANZHAI, Prof., PhD, Kharkiv National University of Internal Affairs, Ukraine, ORCID: 0000-0001-5435-5921

Daria KUSHNIR, PhD, Senior Lecturer, Sumy branch of Kharkiv National University of Internal Affairs, Ukraine, ORCID: 0009-0007-5161-0596

Ganna SOBKO, Prof., PhD, Odesa State University of Internal Affairs, Ukraine, ORCID:0000-0002-5938-3400

Tetiana VOLOSHANIVSKA, Assoc. Prof., PhD., Institute of Law and Security, Odesa State University of Internal Affairs, Ukraine, ORCID: 0000-0002-1060-5412

ORGANIZING COMMITTEE / COMITETUL DE ORGANIZARE

Chairman / Președinte:

Radion COJOCARU, Prof., PhD., Director, Doctoral School „Criminal Sciences and Public Law", „Stefan cel Mare" Academy of MIA, Republic of Moldova

Members / Membri:

Valentin CHIRIŢA, Prof., PhD., Vice-Dean, Faculty of Law, Administration, Public Order and Security, „Stefan cel Mare" Academy of MIA, Republic of Moldova

Decebal Manole BOGDAN, PhD., Lecturer, „1 Decembrie 1918"University of Alba Iulia, Romania

Alexandra TOMA, Assoc. Prof., PhD., Cross-Border Faculty, „Dunarea de Jos" University of Galati, Romania

Evghenia GUGULAN, Assoc. Prof., PhD., Head of „Private Law" Chair, „Stefan cel Mare" Academy of MIA, Republic of Moldova

Ion SLISARENCO, PhD, Head of Criminal Law and Criminology Chair, „Stefan cel Mare" Academy of MIA, Republic of Moldova

Sofia PILAT, Assoc. Prof., PhD., Head of Criminal Procedure, Forensics and Information Security Chair „Stefan cel Mare" Academy of MIA, Republic of Moldova

Mariana PAVLENCU, Assoc. Prof., PhD., „Stefan cel Mare" Academy of MIA, Republic of Moldova

Aida Diana DUMITRESCU, Assoc. Prof., PhD., „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Valeria GHEORGHIU, Assoc. Prof., PhD., „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Laurenţiu DRAGU, PhD., Lecturer, „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Mihaela PASCAL, PhD, Lecturer, „Stefan cel Mare" Academy of MIA; Executive Director, European Consumer Center in the Republic of Moldova

Adina IORDACHE, PhD., Lecturer, „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Ionuț IORDACHE, Assist. Lecturer, „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Mihai CURTEANU, Police Chief Commissioner, „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Mario Daniel CREȚU, Police Chief Commissioner, „Alexandru Ioan Cuza" Police Academy, Bucharest, Romania

Victor MOŢPAN, PhD Student, Senior Specialist, Doctoral School „Criminal Sciences and Public Law", „Stefan cel Mare" Academy of MIA, Republic of Moldova

Carolina PANUŞ, Senior Specialist, Doctoral School „Criminal Sciences and Public Law", „Stefan cel Mare" Academy of MIA, Republic of Moldova

Natalia CONDRAT, Senior Specialist, Doctoral School „Criminal Sciences and Public Law", „Stefan cel Mare" Academy of MIA, Republic of Moldova

CONTENTS:

PLENARY COMMUNICATIONS SESSION
SESIUNE DE COMUNICĂRI ÎN PLEN

Tudor OSOIANU, Dinu OSTAVCIUC
The procedure of judicial review of certain evidentiary measures interfering with fundamental rights in criminal proceedings
Procedura controlului judiciar al anumitor măsuri probatorii care aduc atingere drepturilor fundamentale în procesul penal.....20

Cătălin ANDRUȘ, Lucian IVAN
Cross-border organised crime: threats to national security
Criminalitatea organizată transfrontalieră: riscuri la adresa securității naționale.....31

Yevhen PYSMENSKYY
Collaborative activity in Ukraine through the lens of criminal law: from crime recording to sentencing
Activitatea colaborativă în Ucraina prin prisma dreptului penal: de la înregistrarea infracțiunilor la condamnare.....40

Serghei BRÎNZA, Vitalie STATI
Criminal protection of children against sexual abuse and exploitation: the effects of law no. 5/2026
Protecția penală a copiilor împotriva abuzului și exploatării sexuale: efectele legii nr. 5/2026.....54

Mihaela-Corina BUCUR
The role of legal education in crime prevention: interdisciplinary perspectives and pedagogical strategies
Rolul educației juridice în prevenirea criminalității: perspective interdisciplinare și strategii pedagogice.....64

Igor FEDOROV, Tetiana VOLOSHANAVSKA
Combating drug-related crime in the context of digitalization and martial law: documentation challenges and prospects for improvement
Combaterea criminalității legate de droguri în contextul digitalizării și al legii marțiale: provocări privind documentarea și perspective de îmbunătățire.....76

Valeriu CUȘNIR, Boris GLAVAN
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
Rolul activității speciale de investigații în arhitectura securității naționale a Republicii Moldova: între deziderатul rezilienței și disfuncționalitatea mecanismului investigativ.....88

Mihai-Alexandru STANCIU
The regulation and investigation of the offense of sexual acts with a minor
***Reglementarea și investigarea infracțiunilor contra libertății și integrității sexuale a minorilor*.....100**

Lucian Gabriel PEREȘ
The underground of insecurity: tunnels and hybrid warfare on the eastern border of the European Union
***Subteranul insecurității: tunelurile și războiul hybrid la granița estică a Uniunii Europene*.....110**

Maryna MESNIANKINA
Preventing intentional homicides under extraordinary legal regimes: current status and trends in Ukraine
***Prevenirea omorurilor intenționate în cadul regimurilor juridice extraordinare: starea actuală și tendințele în Ucraina*.....119**

George ȚICAL
Tactical and legal challenges in "SKY ECC" and "ENCROCHAT" type missions: the impact of communications decryption on drug trafficking cases in Romania
***Provocări tactice și juridice în misiunile de tip "SKY ECC" și „ENCROCHAT": impactul decriptării comunicațiilor asupra cazuisticii de trafic de droguri din România*.....128**

Iulia BULEA, Cătălin NICOLESCU
Modern methodological approaches to anticipating criminal phenomena
***Abordări metodologice moderne în anticiparea fenomenelor infracționale*.....138**

Vasile COMAN
Criminal denunciation as a criminal policy instrument in combating drug trafficking: analysis of romanian regulation and comparative law benchmarks
***Denunțul penal ca instrument de politică penală în combaterea traficului de droguri: analiza reglementării române și repere de drept comparat*.....148**

Olena FEDORENKO, Viktoriia DOTSENKO
Psyhological techniques of police crisis communication with veterans in conditions of martial law
***Tehnici psihologice de comunicare în criză între poliție și veteran în condiții de lege marțială*.....160**

Daniela ȘOIMU, Marius FRIJA
Asset recovery in money laundering cases: contemporary developments and challenges
***Recuperarea bunurilor infracționale în cauzele de spălare a banilor: evoluții și provocări contemporane*.....168**

Ion COVALCIUC
The use of special knowledge in criminal process: practical needs and solutions
***Utilizarea cunoștințelor speciale în procesul penal: necesități practice și soluții*.....179**

Oleksandra PTASHNYK
Crime in the context of armed conflict: a sociological analysis of changes in the structure of criminal offenses
Criminalitatea în contextul conflictelor armate: o analiză sociologică a schimbărilor în structura infracțiunilor penale.....187

Elena-Ana DUDA
Intervention tactics and legal rigor in the application of the provisional protection order: comparative study Romania – Republic of Moldova
Tactici de intervenție și rigoare juridică în aplicarea ordinului de protecție provizoriu: studiu comparativ România – Republica Moldova.....194

Andrei CAZACICOV
Violation of the tenant's domicile by the landlord: a case study
Violarea domiciliului chiriașului de către proprietar: studiu de caz.....207

Gheorghe RENIȚĂ
Prohibition of the carrying protective weapons at peaceful assemblys
Interzicerea portului de arme de protecție la întrunirile pașnice.....219

Cristian POPA, Veronica MIHALACHE
Corruption 2.0 – Phenomenon and crime
Corupția 2.0 – Fenomen și infracțiune.....229

Ștefan BELECCIU, Ivan SÎRBU
Fundamental principles governing the adoption of administrative acts: a guarantee of the legality and efficiency of administrative activity
Principiile fundamentale care guvernează adoptarea actelor administrative: garanție a legalității și eficienței activitățiiadministrativea.....236

Ganna SOBKO
Organized crime in conditions of martial law: challenges of counteraction and directions for scholarly analysis
Criminalitatea organizată în condițiile legii marțiale: provocări ale combterii și direcții pentru analiza științifică.....246

Florin CAZACU
Streamlining crime prevention in e-commerce through the digital individualization of non-custodial preventive measures
Eficientizarea prevenirii criminalității în e-commerce prin individualizarea digitală a măsurilor preventive neprivative de libertate.....256

Mihaela-Miruna TUDORAŞCU
The culture of integrity: prevention mechanisms in public administration
Cultura integrității: mecanisme de prevenție în administrația publică.....264

Ion BOTNARI, Evghenia GUGULAN
The interference between personal data protection and the requirements of forensic investigation in identity theft cases involving organised criminal groups
Interferența dintre protecția datelor cu caracter personal și exigențele investigației criminalistice în cauzele de furt de identitate comis de grupuri criminale organizate.....274

Mykola KNYHNYTSKYI
Legal culture as a factor in the effectiveness of administrative and legal regulation: a theoretical and legal perspective
Cultura juridică ca factor al eficienței reglementării administrativ-juridice: o perspectivă teoretico-juridică.....285

Sorin Silviu FINTA
Criminalistic investigation of offences committed in the online environment against children
Investigarea criminalistică a infracțiunilor comise în mediul online împotriva copiilor.....291

Anastasiia VUIMA
Organizational and tactical principles of forensic protection for combating crimes against the basis of national security
Principii organizatorice și tactice ale asigurării criminalistice în combaterea infracțiunilor împotriva fundamentelor securității naționale.....303

Ancuța Elena FRANȚ
The role of artificial intelligence in preventing and combating crime: opportunities and risks
Rolul inteligenței artificiale în prevenirea și combaterea criminalității: oportunități și riscuri.....313

Daniel CRISTEA, Ștefan MUNTEANU
The notion and essence of the right to privacy
Noțiunea și esența dreptului la viața privată.....325

Dianu GORDILĂ, Cătălin ENUȚĂ
National security environment of the Republic of Moldova: risks and threats
Mediul de securitate națională a Republicii Moldova: riscuri și amenințări.....334

Monica DANILIUC
Subjects of evidence administration in the digital era: balancing investigative efficiency and fair trial guarantees
Subiecții administrării probelor în era digitală: echilibru între eficiența investigativă și garanțiile procesului echitabil.....344

Veaceslav URSU
Regulation of special and extended confiscation in the criminal legislation of the Republic of Moldova
Reglementarea confiscării speciale și extinse în legislația penală a Republicii Moldova.....354

Ștefan-Gabriel DASCĂLU
Terrorism and organized crime: modern forms of manifestation, interaction and operational convergence
Terorismul și criminalitatea organizată: forme moderne de manifestare, interacțiune și convergență operațională.....369

Artem KOVALENKO, Valentina LYAMPEL
The system of subjects of forensic expert activity in Ukraine: current state and problems of its formation
Sistemul subiecților activității de expertiză criminalistică în Ucraina: starea actuală și problemele formării acesteia.....376

Elena-Irina RAHIMIAN (CÎRCIUMARU)
The importance of the regulation of art. 19 of law no. 682/2002 on witness protection in preventing and combating crime in Romania
Importanța reglementării art. 19 din legea nr. 682/2002 privind protecția martorilor în prevenirea și combaterea criminalității în România.....385

Raluca-Mihaela BUCULEA
Human trafficking for the purpose of organ harvesting: from a fragmented regulatory framework to a unified approach
Traficul de persoane în scop de prelevare de organe: de la fragmentare normativă la abordare unitară.....391

Ana ZABULICA
The theoretical and practical approach to the institution of detention through the lens of the purpose and functions of criminal law in the Republic of Moldova
Abordarea teoretico-practică a instituției reținerii prin prisma scopului și a funcțiilor dreptului penal în Republica Moldova.....402

Dan FURCULIȚA
Delimitation of the offense of inducement, determination or facilitation the provision of online sexual services from human trafficking and involving a child in pornographic performances
Delimitarea infracțiunii de îndemn, determinare sau înlesnire la prestarea serviciilor sexuale online de traficul de ființe umane și participarea unui copil la spectacole pornografice.....412

Uliana KUZENKO
Derogation from obligations under the European Convention on Human Rights during martial law: limits of permissibility and state practise
Derogarea de la obligațiile prevăzute de Convenția Europeană a Drepturilor Omului în timpul legii marțiale: limitele admisibilității și practica statelor.....420

Radion COJOCARU, Ana-Maria GHERMAN-GRIMAILO
The quality requirements of the criminal law as an expression of the principle of legality
Exigențele de calitate ale normei de incriminare ca expresie a principiului legalității penale.....426

Oleksandr MANZHAI, Iryna MANZHAI
Satellite imagery investigation as a method of detecting and recording evidence of criminal activity
Investigarea imaginilor satelitare ca metodă de deectare și înregistrare a probelor activității criminale.....437

Iurie LARII
Data analysis in criminology: modern tools for crime prevention and control
Analiza datelor în criminologie: instrumente moderne de prevenire și combatere a criminalității.....448

Albert ANTOCI, Alexandru-Stelian SPÎNU
National and international legal particularities of the criminal investigation of customs offences committed through postal shipments
Particularități legislative naționale și internaționale ale investigării procesual-penale a infracțiunilor vamale comise prin intermediul trimiterilor poștale.....458

Volodymyr KOVALENKO
Capabilities of fingerprint and traceological examinations and particularities of their appointment in the investigation of profit-motivated criminal offenses committed under martial law in Ukraine
Capabilitățile expertizelor dactiloscopice și traseologice și particularitățile dispunerii acestora în investigarea infracțiunilor cu scop de profit comise în condiții de lege marțială în Ucraina.....466

Natalia BUZA, Valeria SEREBREAN
Identity fraud as a border risk: methods of identification and prevention
Impostura identitară ca risc la frontieră: metode de identificare și prevenire.....474

Maria Cristina CHIRU
The role of collective emotions in the outbreak and maintenance of conflicts
Rolul emoțiilor colective în declanșarea și menținerea conflictelor.....483

Elena PÎRĂU
The principle of legality as a premise for crime prevention: landmarks from ECHR case-law and implications for the Republic of Moldova
Principiul legalității ca premisă a prevenirii criminalității: repere juridice din jurisprudența cedo și implicații pentru Republica Moldova.....491

Vitalie MUNTEAN
Influence peddling: a critical analysis of the Republic of Moldova criminal law regulations in the context of european harmonization
Traficul de influență: o analiză critică a reglementărilor juridico-penale din Republica Moldova în contextul armonizării europene.....500

Alexandru ZOSIM
Comparative legal analysis of the sources of criminal law in foreign countries
Analiza juridico-comparativă a izvoarelor dreptului penal din țările străine.....507

Yaroslav LANTINOV
Metrological control of axiological consistency as a strategy for preventing crimes against justice
Controlul metrologic al consistenței axiologice ca strategie de prevenire a infracțiunilor împotriva justiției.....512

Ana-Maria CHEPESTRU
The correlation between the concepts of "public order" and "public security" in the process of the legal qualification of the crime of mass riots
Corelația dintre conceptele „ordine publică" și „securitate publică" în procesul de calificare juridică a infracțiunii de dezordini în masă.....518

Andrei NASU
User safety and the protection of minors in the digital age under the ai ACT and the DSA: implications for the legal framework of the Republic of Moldova
Siguranța utilizatorilor și protecția minorilor în era digitală prin prisma ai ACT și DSA: implicații pentru cadrul normativ al Republicii Moldova.....526

Marian GHERMAN, Sergiu VEREBCEANU
Procedures for adjustment the national legislation on the punishment applied to the legal entity in correlation with European Union legislation
Proceduri de armonizare a legislației naționale a pedepsei aplicate persoanei juridice în coraport cu legislația Uniunii Europene.....538

Roman RUSSU
Criminal liability for tax evasion of economic entities in the Republic of Moldova: theoretical distinctions, practical aspects and contemporary challenges
Răspunderea penală pentru evaziunea fiscală a entităților economice în Republica Moldova: delimitări teoretice, aspecte practice și provocări contemporane.....546

Daniel CRISTEA, Laurențiu Gabriel CÎRSTEA
The purpose of applying the measure of preventive arrest in accordance with respect for the right to private life
Scopul aplicării măsurii arestului preventiv în concordanță cu respectarea dreptului la viața privată.....557

Carmen DICHII
The notion of monetary signs in the context of the offences provided in articole 236 of the Criminal Code
Noțiunea de semne bănești în contextul infracțiunilor prevăzute la articolul 236 din Codul Penal.....565

Radion COJOCARU, Mihai CURTEANU
The offence of treason against the state (article 337 of the Criminal Code of the Republic of Moldova) in light of the quality standards of criminal law enshrined in article 7 of the ECHR
Infracțiunea de trădare de patrie (articolul 337 Codul Penal al Republicii Moldova) în lumina standardelor de calitate ale legii penale consacrate de articolul 7 CTEDO.....573

Boris GLAVAN, Alexandru CICALA
Special investigations in the common law system
Investigațiile speciale în sistemul de common law.....580

Viorica STRELCIUC
Criminal responsibility occurring in the case of committing crimes against people with disabilities – the victim in criminal law
Răspunderea penală survenită în cazul comiterii infracțiunilor asupra persoanei cu dizabilități – victima în dreptul penal.....591

Gheorghe GLADCHI
Juvenile criminal liability in the Republic of Moldova: mitigated regime and educational orientation
Răspunderea penală a minorilor în Republica Moldova: regim atenuat și orientare educativă.....599

Simion CARP, Oleg RUSU
Ensuring the right to information with regard to persons sentenced to imprisonment
Realizarea dreptului la informație în privința persoanelor condamnate la pedeapsa cu închisoare.....610

Alexandru STOLEARENCO, Valentin CHIRIȚA
The legal object of the offence under article 290 of the Criminal Code of the Republic of Moldova
Obiectul juridic al infracțiunii prevăzute la articolul 290 Cod Penal al Republicii Moldova.....618

Bogdan-Petru TANAS
ECHR standards on the defence and representation of legal entities
Standardele Curții Europene a Drepturilor Omului privind apărarea și reprezentarea persoanelor juridice.....631

Dumitru TABACARU, Andrei NASTAS
Aspects regarding the delimitation between the offence of false identity and identity theft
Aspecte privind delimitarea infracțiunii de fals de identitate și a furtului de identitate.....639

Vadim GRIBINCEA
The principles governing the judicial investigation during the trial on the merits of criminal cases
Principiile care guvernează cercetarea judecătorească la examinarea în fond a cauzelor penale.....649

Doinița ȚÎMBALARU, Marius Ioan MUREŞAN
The electronic record of ascertainment of road traffic contravention: aspects of legality and procedural compliance
Procesul-verbal electronic de constatare a contravenției rutiere: aspecte de legalitate și conformitate procedurală.....658

Alexandru FRUNZĂ, Aliona FRUNZĂ
ECtHR standards on entrapment and the fairness of evidence in corruption cases
Standardele CtEDO privind provocarea și loialitatea administrării probelor în cazurile de corupție.....673

Mihaela COJOCARU (BEJENARI), Regina FASOLA
Assessment of the legal framework of the state-protected areas and vulnerabilities that facilitate environmental crime
Evaluarea cadrului juridic al ariilor protejate de stat și a vulnerabilităților care facilitează criminalitatea de mediu.....684

Lilia CATAN, Evghenia GUGULAN
Theoretical foundations of crime prevention in modern prevention and combating policies: problems and perspectives
Fundamentele teoretice ale prevenirii criminalității în cadrul politicilor moderne de prevenire și combatere: probleme și perspective.....702

SECTION CRIMINAL SCIENCES AND PUBLIC LAW
SECȚIUNEA ȘTIINȚE PENALE ȘI DREPT PUBLIC

Andreea Nicoleta DRAGOMIR
From cybercrime to ai-enabled crime: adapting the legal framework in the european and international context
De la criminalitatea informatică la criminalitatea asistată de inteligență artificială: adaptarea cadrului juridic în spațiul european și internațional.....713

Daniel CREȚU MARIO, Sergiu CERNOMOREŢ
The applicability of article 8 of the ECHR to the offence of computer fraud: limits of digital investigations and requirements of a fair trial
Incidența art. 8 din CHEDO cu privire la infracțiunea de fraudă informatică: limitele investigației digitale și exigențele unui proces echitabil.....721

Anișoara BĂBĂLĂU, Andra Maria BREZNICEANU
About the effects of the return decision
Despre efectele deciziei de returnare.....730

Adrian BĂNCILĂ
Recent approaches to asylum policies: comparative analysis
Abordări recente în materia politicilor de azil: analiză comparată.....741

Olesea BLAȘCU
The concept, content and system of forensic support for the investigation (examination) of crimes concerning sexual life
Noțiunea, conținutul și sistemul asigurării criminalistice a investigării (cercetării) infracțiunilor privind viața sexuală.....753

Snejana CIOCHINĂ
Legal and criminal law delimitation of the offences under articles 257 and 257¹ of Criminal Code of the Republic of Moldova: theoretical aspects and practical implications
Delimitarea juridico-penală a infracțiunilor prevăzute la art. 257 Și art. 257¹ din Codul Penal al Republicii Moldova: aspecte teoretice șu implicații practice.....763

Mariana Irina MAGIRESCU CERNAT
Violence from the neuropsychoendocrine and immunophysiological perspective
Violența din perspectiva neuropsihoendocrină și fiziologică.....772

Daniel CRISTEA, Viorica OSOIANU
Development of the legal framework on the right to privacy in Romania and the Republic of Moldova
Dezvoltarea cadrului legal privind dreptul la viața privată în România și Republica Moldova.....783

Laurențiu Gabriel CÎRSTEA
Persons who escape criminal liability
Persoanele care se eschivează de răspundere penală.....793

Andreea BURUIANA (RUSU)
Personal data protection in the context of the education digitalization
Protecția datelor cu caracter personal în contextul digitalizării educației.....802

Mihai ȘTEFĂNOAIA
Prevention of crime in the digital era: challenges, modern tools and institutional cooperation
Prevenirea criminalității în era digitală: provocări, instrumente moderne și cooperare instituțională.....807

Oxana CIUDIN
The judicial experiment as a form of applying the experimental method in criminal proceedings
Experimentul judiciar: formă de utilizare a metodei experimentale în cadrul procesului penal.....813

Mariana VATAMANITA
Digitalization of building permits as an instrument for preventing construction -related offenses
Digitalizarea autorizațiilor de construire ca instrument de prevenire a infracțiunilor în construcții.....821

Boris GLAVAN, Radu Constantin MARINESCU
Utilization of the outcomes of special investigative activities in South Sudan: an analysis between operational reality and european human rights standards
Valorificarea rezultatelor activității speciale de investigații în Sudanul de Sud: o analiză între realitatea operațională și standardele europene ale drepturilor omului....831

Diana MILEA
The role of criminal policy in combating forced marriage: normative approaches and intervention mechanisms
Rolul politicii penale în combaterea căsătoriei forțate: abordări normative și mecanisme de intervenție.....841

Daniel CRISTEA
International standards on the right to privacy
Standarde internaționale privind dreptul la viața privată.....849

Ecaterina BORTA
Digitalization of the supervision of conditionally released persons: electronic monitoring between procedural efficiency and respect for private life
Digitalizarea supravegherii persoanelor liberate condiționat: monitorizarea electronică între eficiență procesuală și respectarea vieții private.....860

Adrian BĂNCILĂ
Migration, national security and the rule of law: a comparative perspective
Migrația, securitatea națională și statul de drept: o perspectivă comparată.....869

Simion CARP, Alexandru PARENIUC
The phenomenon of child kidnappings during the soviet-engineered famine in 1946–1947 on the territory of Moldavian Soviet Socialist Republic (MSSR)
Fenomenul răpirii copiilor în timpul foametei din anii 1946–1947, provocate artificial de către autoritățile sovietice pe teritoriul RSSM.....879

Aurelian-Gabriel BĂDIȚĂ
Cybersecurity – component of national security
Securitatea cibernetică – componentă a securității naționale.....897

Marcel BOŞCANEANU
Criminalization of air pollution: the role of article 230 of the Criminal Code of the Republic of Moldova in preventing environmental crime
Incriminarea poluării aerului atmosferic: rolul articolului 230 din Codul Penal al Republcii Moldova în prevenirea criminalității de mediu.....905

Lucia-Narcisa DUMITRAȘCU
Crime scene investigation in the digital era: the contribution of 3D scanning technology
Investigarea locului faptei în era digitală: aportul tehnologiei de scanare 3D.....916

Mircea GLADCHI
Forms of regulating digital assets in the context of ensuring the security of the digital environment of the Republic of Moldova
Formele de reglementare a bunurilor digitale în contextul asigurării securității mediului digital al Republicii Moldova.....925

Valentina RUSSU
Models of criminal sanctions for minors
Modele de sancționare penală a persoanelor minore.....933

Sergiu CERNOMOREȚ, Anatolie FAIGHER
Some aspects of the determinants of crime in the Republic of Moldova
Unele aspecte ale determinantelor criminalității în Republica Moldova.....943

Ion BOTNARI
Special investigative measures in the investigation of offences committed by organised criminal groups
Măsurile speciale de investigație în cadrul cercetării infracțiunilor comise de grupuri criminale organizate.....953

Galina BOUBATRÎN
The role of judicial review in strengthening institutional integrity and preventing corruption among public officials
Rolul controlului judiciar în consolidarea integrității instituționale și prevenirea corupției în rândul agenților publici.....959

Ionuț-Robert CIOBĂNICĂ
Geopolitical transformations in the 21st century: the role of great powers and political leaders
Geopolitical transformations in the XXI century: the role of great powers and political leaders.....967

Ludmila GUȘTIUC
The institutional dynamics of the National Bank of Moldova in the context of european integration
Dinamica instituțională a Băncii Naționale a Moldovei în contextul integrării europene....977

Doinița ȚÎMBALARU
Contravention liability of legal persons in the field of road traffic: issues of qualification and application
Răspunderea contravențională a persoanelor juridice în domeniul circulației rutiere: probleme de calificare și aplicare.....988

Iulian MAXIM
Electronic monitoring in combating domestic violence: comparative analysis Romania and the Republic of Moldova through the lens of ECTHR case law
Monitorizarea electronică în combaterea violenței domestice: analiza comparativă România și Republica Moldova prin prisma juristprudenței CEDO.....999

Daniel CRISTEA
The right to privacy in conformity with the application of the right to integrity from the point of view of preventing and fighting corruption
Dreptul la viața privată în concordanță cu aplicarea dreptului la integritate din punct de vedere al prevenirii și combaterii corupției.....1005

Ioan-Ciprian DOSPINOIU
International negotiation as a tool for criminal justice cooperation in preventing and combating transnational crime
Negocierea internațională ca instrument al cooperării juridico-penale în prevenirea și combaterea criminalității transnaționale.....1014

Simion CARP, Vladislav GROZINSCHI, Radion ROTARU
The situation of japanese military personnel held in prisoner-of-war camps in the USSR
Situația militarilor japonezi aflați în lagărele pentru prizonieri de război din URSS.....1018

Ion BADRAJAN, Andrei NASTAS
Torture in armed conflicts: incrimination and international criminal responsibility
Tortura în conflictele armate: incriminare și răspundere penală internațională.....1038

Boris BRÂNCOVEANU
Manifestations, trends and dynamics of transnational organized crime
Domeniile de manifestare, tendințele și dinamica criminalității organizate transnaționale.....1050

Natalia SĂVULESCU
Online crime against minors and the response of criminal policy: between reaction and prevention
Criminalitatea online împotriva minorilor și răspunsul politicii penale: între reacție și prevenție.....1061

Natalia DONICA
The criminological profile of the scammers: between theoretical construction and judicial reality
Profilul criminologic al escrocului: între construcție teoretică și realitate judiciară.....1068

Dorel COJOCARI, Snejana CIOCHINĂ
Determination and application of the limitation period for contraventional liability in the case of offences provided for in article 179 of the Contravention Code of the Republic of Moldova
Determinarea și aplicarea termenului de prescripție a răspunderii contravenționale în cazul faptelor prevăzute la art. 179 Cod Contravențional al Republicii Moldova.....1079

Octavian PAVLOVSCHI
Tracking and recovering criminal assets
Urmărirea și recuperarea bunurilor infracționale.....1088

Carolina BELEAEV
Methods of acquiring and extinguishing property rights in the public domain
Modurile de dobândire și de stingere a dreptului de proprietate în domeniul public.....1097

Alexandru STOLEARENCO
The illegal circulation of firearms and ammunition in the criminal law of the Republic of Moldova: an analysis of the modalities of acquisition, manufacturing, repair, modification, and illegal commercialization provided under article 290 of the Criminal Code of the RM
Circuitul ilegal al armelor și muniților în dreptul penal al Republicii Moldova: analiza modalităților de procurare, fabricare, reparare, modificare și comercializare ilegală prevăzute la artticolul 290 CP RM.....1104

Niki Nicolae POPESCU
The role of public policies in preventing and combating crime
Rolul politicilor publice în prevenirea și combaterea criminalității.....1113

PLENARY COMMUNICATIONS SESSION

SESIUNE DE COMUNICĂRI ÎN PLEN

CZU: 343.1 **DOI: https://doi.org/10.5281/zenodo.20793505**

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

Tudor OSOIANU,
PhD, University Professor,
Department of Criminal Procedure, Forensics and Information Security,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-1506-4501

Dinu OSTAVCIUC,
PhD Habilitated, University Professor,
Rector, "Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0001-5317-3296

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 *Varga 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 ap-

propriate, 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 ap-

pears 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.

Bibliographical references

1. Decision of the Constitutional Court No.162 of 14.12.2018 on the inadmissibility of referral No.199g/2018 concerning the exception of unconstitutionality of Article 115 para. (5) of the Enforcement Code.
2. Decision of the Constitutional Court No.45 of 08.07.2016 on the inadmissibility of referral No.79g/2016 concerning the exception of unconstitutionality of certain provisions of Article 300 para. (4) CPC (territorial jurisdiction of the investigating judge).
3. Igor Dolea. The Rights of the Person in Criminal Evidence: The Concept of Promoting the Private Element. Chișinău, 2009, 417 p.
4. Igor Dolea. Evidence in Criminal Proceedings: A Guide for Lawyers. Chișinău, 2016, 55 p.
5. Dumitru Obadă. Interference and Dimensions of Procedural Criminal Control in the Sphere of Special Surveillance or Investigation Techniques. In: Security Mandate: Current Issues of Interpretation, Legislation and Practice. National Scientific-Practical Conference, Chișinău, 08.09.2020, pp. 155–165.
6. Judgment of the ECtHR Blečić v. Croatia, 08.03.2006. Available: https://hudoc.echr.coe.int/eng?i=001-72688 (accessed: 17.02.2026).

7. Judgment of the ECtHR Lisovaia v. Moldova, 16.01.2018. Available: http://hudoc.echr.coe.int/eng?i=001-180287 (accessed: 09.03.2026).
8. Judgment of the ECtHR Bostan v. Moldova, 08.12.2020. Available: https://hudoc.echr.coe.int/eng?i=001-206346 (accessed: 22.02.2026).
9. Judgment of the ECtHR FIODOROV & CO S.R.L. v. Moldova, 27.02.2025. Available: https://hudoc.echr.coe.int/?i=001-241841 (accessed: 12.03.2026).
10. Judgment of the ECtHR Olsson v. Sweden, 24.03.1988. Available: https://hudoc.echr.coe.int/eng?i=001-57788 (accessed: 24.03.2026).
11. Judgment of the ECtHR Varga v. Romania. Available: http://hudoc.echr.coe.int/eng?i=001-123847 (accessed: 17.02.2026).
12. Decision of the Constitutional Court No.22 concerning the exception of unconstitutionality of certain provisions of Article 126 para. (2) CPC (guarantees regarding the collection of information on telephone communications).
13. Plenum Decision of the Supreme Court of Justice No.7 of 04.07.2005 on the practice of ensuring judicial control by the investigating judge during criminal proceedings (pt. 2.12).
14. Decision of the Superior Council of Magistracy No.142/4 of 04.02.2014 on the approval of the Instruction regarding record-keeping and procedural documentation in courts and courts of appeal.
15. Igor Dolea. Criminal Procedure Code of the Republic of Moldova (Applied Commentary). CARTEA JURIDICĂ Publishing House, Chișinău, 2016, p. 1172.
16. Igor Dolea, Dumitru Roman, Tatiana Vîzdoagă. Criminal Procedure Code. Commentary. Chișinău, 2005, 767 p.
17. Mihai Poalelungi, Artur Airapetean, Elena Cobzac et al. Models of Judicial Acts in Criminal Proceedings for Investigating Judges. Chișinău, 2018, 940 p.
18. Valeria Șterbeț et al. Efficient Administration of Justice. Cartier Publishing House, Chișinău, 2006, 368 p.
19. Valeria Șterbeț et al. Guide for the Investigating Judge. Chișinău, 2007, 664 p.

CZU 343.341 **DOI: https://doi.org/10.5281/zenodo.20793006**

CROSS-BORDER ORGANISED CRIME: THREATS TO NATIONAL SECURITY

Cătălin ANDRUȘ,
PhD, Associate Professor,
Rector, "Alexandru Ioan Cuza" Police Academy,
Bucharest, Romania
ORCID: 0009-0009-5308-7035

Lucian IVAN,
PhD, Associate Lecturer,
National College of Internal Affairs,
"Alexandru Ioan Cuza" Police Academy,
Bucharest, Romania
ORCID: 0009-0007-7105-5219

Abstract

Cross-border organised crime within the European Union is characterised by extreme dynamism, requiring proactive measures from European and national law enforcement agencies to mitigate the risks posed by this extremely dangerous criminal phenomenon. This highly dangerous criminal phenomenon poses risks to European society, which may react strongly if European and national authorities fail to intervene effectively to mitigate the criminal activity generated by cross-border organised crime.

This paper aims to present the main characteristics of cross-border organised crime, in the context of recent technological changes, particularly in the virtual environment. To achieve the proposed objectives, two specific strategic analysis methods (PESTEL and SWOT) were employed, enabling the accurate identification of the main characteristics of organised crime. Subsequently, based on these characteristics, certain proposals were formulated to mitigate the criminal phenomenon generated by organised crime groups. The work initiated by this scientific research is to be continued by the authors to identify the structural changes that have occurred within organised crime groups and their impact on the criminal phenomenon.

Keywords: organised crime, cross-border, drugs, money laundering, corruption, encryption.

CRIMINALITATEA ORGANIZATĂ TRANSFRONTALIERĂ: RISCURI LA ADRESA SECURITĂȚII NAȚIONALE

Abstract

Criminalitatea organizată transfrontalieră la nivelul Uniunii Europene este caracterizată printr-o dinamicitate extremă, fiind necesare măsuri pro-active din partea structurilor europene și naționale de aplicare a legii pentru diminuarea riscurilor generate de acest fenomen criminogen extrem de periculos. Acest fenomen criminogen foarte periculos induce riscuri la nivelul societății europene care poate reacționa virulent în situația în care autoritățile europene și cele naționale nu intervin eficient pentru diminuarea fenomenului infracțional generat de criminalitatea organizată transfrontalieră.

Lucrarea de față își propune să prezinte principalele caracteristici ale criminalității organizate transfrontaliere, în condițiile modificărilor tehnologice recente, în special în domeniul mediului virtual. În cadrul lucrării, pentru îndeplinirea obiectivelor propuse, au fost utilizate două metode specifice analizei strategice (PESTEL și SWOT), care au permis identificarea corectă a principalelor caracteristici ale criminalității organizate. Ulterior pe baza acestor caracteristici au fost formulate anumite propuneri pentru diminuarea fenomenului criminogen generat de grupările de criminalitate organizată. Lucrul inițiat prin această cercetare științifică urmează să fie continuat de autori pentru identificarea modificărilor structurale care au apărut în

cadrul grupărilor de criminalitate organizată și impactul acestora asupra fenomenului criminogen.
Cuvinte-cheie: criminalitate organizată, transfrontalier, droguri, spălare bani, corupție, criptare.

Introduction. Cross-border organised crime has become a persistent threat, having recently shown a significant negative trend in terms of public order and safety, with a worrying projected trajectory in terms of its impact on citizens and communities; these persistent risks are such that they could also affect the national security of the Member States of the European Union (EU).

The EU-SOCTA 2025 analysis, carried out by Europol, shows that cross-border organised crime within the European Union has become far more complex, and the methods used are far more varied and subtle, characterised as having a 'new DNA' adapted to the digital environment and capitalising on the opportunities generated by a geopolitical context marked by a high degree of fluidity and unpredictability. Thus, the threats posed by organised crime groups operating across borders within EU Member States are pervasive and serious, given that organised crime groups have the ability to adapt their modus operandi very rapidly, and their ability to adapt to new tools available online, including the use of artificial intelligence (AI) is very high [1].

The primary aim of organised crime groups is to obtain vast sums of money through illegal means, thereby undermining national economies, the rule of law and society as a whole. At the same time, there has recently been active collaboration between organised crime groups and state and non-state entities that use hybrid means to misinform and influence public opinion with the aim of discrediting the fundamental institutions of the rule of law, with a noticeable shift in the allocation of resources, expertise and protection to achieve their objectives. Thus, it can be said that a fluid boundary is emerging between ideological motivations and profit, the aim being to destabilise the rule of law at the state level, as well as to discredit public institutions in order to create a favourable climate for carrying out illicit activities.

It is noted that organised crime groups are characterised by increased dynamism and flexibility, being constantly concerned with anonymising their activities or creating the appearance of legality for the activities carried out, by exploiting existing vulnerabilities in the social, economic or judicial system. Furthermore, another identified characteristic is the use by cross-border organised crime groups of violent means to achieve their objectives, with aggressive incidents having increased recently, a fact which reveals that these groups have consolidated their presence and confidence in their own capabilities. These frequent acts of violence erode public confidence in the state's ability to protect its own citizens and significantly undermine trust in the state law enforcement agencies responsible for dismantling organised crime groups.

The profits generated by criminal groups are on a par with those generated by multinational corporations; there are reports of criminal entities concealing profits derived from illegal activities within the legitimate economy, thereby multiplying illegally obtained funds into lawful funds circulating within the legitimate economic sphere. This highlights the considerable ability of organised crime groups to adapt to changes in the criminal environment and to adjust to the activities of law enforcement authorities.

Organised crime groups are not constrained by borders, neither those within the EU nor those between the EU and the rest of the world. At the same time, organised crime

is increasingly fuelled online, namely through the exploitation of digital and internet infrastructure by criminal networks [2].

Methods and materials obtaine. In order to accurately characterise cross-border organised crime, qualitative analyses specific to the strategic analytical field were carried out. In this context, the PESTEL and SWOT analytical methods were used to conduct a comprehensive assessment of the subject area, namely the analysis of cross-border organised crime. The strategic-level analytical methods chosen to characterise and assess the impact of cross-border organised crime at European Union level proved highly valuable for this scientific endeavour, as they were useful for structuring existing information and for drawing certain hypotheses and analytical conclusions in a scientific manner.

Furthermore, to ensure the scientific article was properly substantiated, official sources from European institutions such as Europol and Frontex were analysed, as well as scientific articles written by renowned experts in the field, which enabled an accurate characterisation of cross-border organised crime at EU level.

Although the focus was on the situation of organised crime at EU level, the conclusions and analytical hypotheses can be extrapolated to other countries, and even globally, given that although these organised crime groups exhibit certain characteristics specific to their region of origin, their modus operandi are generally common and display a considerable degree of uniformity worldwide.

The main aim of the scientific approach taken in this article was to identify the risks posed by cross-border organised crime at EU level and to the national security of Member States, as well as to formulate possible solutions to mitigate these risks and the associated vulnerabilities.

Results obtained from the application of strategic-level analytical methods. In order to characterise organised crime, it was necessary to employ specific methods of strategic analysis; the PESTEL method was chosen, as it allows for a comprehensive analysis of the political, economic, social, technological, environmental and legal factors related to the criminogenic phenomenon generated by organised crime.

Cross-border organised crime is fuelled by these factors, yet at the same time influences them; the asymmetric nature of this threat stems from the fact that organised crime groups act without any scruples to achieve their primary objective, which is to obtain funds by any means, but especially by illicit means.

P – Political:

• **Geopolitical instability:** Active military conflicts on the EU's borders (Ukraine, the Middle East) are creating new routes for the trafficking of arms, drugs and human beings, diverting the attention of law enforcement agencies from effectively combating organised crime, as they are preoccupied with maintaining order and national security in areas close to active military conflict. In this context, active military conflicts exacerbate the illicit activities carried out by organised crime groups, which identify the opportunities generated by these active wars, in the sense that state control is deficient in these areas, a factor that allows illicit activities to take place, including the use of weapons found in these sensitive and vulnerable areas.

• **Divergent political will:** Although there is cooperation between EU Member States, and between the authorities responsible for preventing and combating organised crime, differing national priorities and the rise of movements challenging multilateralism can hinder the exchange of information between EU Member States. Another aspect that

has come to light recently is the rise of extremist political forces calling for the dissolution of the EU and closer ties with states with authoritarian political regimes, such as the Russian Federation, Belarus, etc. The actions of these extremist political forces may lead to divisions within European institutions and may affect the decision-making process, including by blocking important initiatives at both the strategic and operational levels.

• **Institutional corruption:** The infiltration of local and national political structures remains the primary means by which organised crime networks secure protection and access to public contracts. The phenomenon of corruption is extremely dangerous, given that organised crime groups manage to corrupt high-ranking public officials in order to protect their illicit activities and to channel money obtained through illegal means into the legal financial system. Recently, there has been a noticeable trend among leaders of cross-border organised crime groups to corrupt political leaders who are concerned solely with political success by any means, without verifying the source of the money donated by these organisations or their interests in achieving their illicit objectives. The greatest risk posed by corruption is the corruption of officials within European Union institutions involved in implementing cooperation mechanisms to combat cross-border organised crime, including those responsible for establishing EU-level regulations in strategically sensitive areas.

E – Economic:

• **Money laundering through the legal economy:** Infiltration of the real estate, logistics and hospitality sectors to introduce funds obtained by organised crime groups through illicit means into the legal economic circuit. Organised crime groups carry out activities to launder money and introduce illicit funds into the legal economic circuit, with the aim of multiplying the funds obtained and further financing their illicit activities. The risks posed by these activities are very high, given the interest of organised crime groups in infiltrating the political sphere to gain material advantages and influence decisions taken at the level of state institutions.

• **Economic disparities:** The cost-of-living crisis and inflation increase citizens' vulnerability, making them more susceptible to recruitment into drug-courier networks or networks involved in the illegal transport of migrants. In this context, organised crime groups exploit the economic vulnerabilities of the population, both to recruit members more easily and to fuel public discontent with the aim of undermining the credibility of the state's fundamental institutions, including law enforcement agencies.

• **The cryptocurrency black market:** The use of digital assets for rapid cross-border transactions that bypass the traditional banking system and tax monitoring. To this end, the use of cryptocurrencies enables organised crime groups to anonymise financial transactions and transfer large sums of money without risking detection of the funds' true origin.

S – Social:

• **Changing patterns of drug use:** The rising demand for synthetic drugs and cocaine among young people directly fuels the illicit revenues generated by organised crime networks. Drug use, particularly among young people, is on the rise, a trend that allows organised crime groups to diversify their range of psychotropic substances on the illicit market. This escalation in the use of high-risk drugs places pressure on law enforcement agencies, which are forced to allocate substantial additional resources to dismantling organised crime groups specialising in drug trafficking.

• **Forced migration:** The exploitation of migrant flows by organised crime groups specialising in human trafficking, turning humanitarian crises into opportunities for profit. Organised crime groups exploit the vulnerabilities of people in areas with migration potential who wish to migrate to European Union Member States, with the aim of recruiting these individuals for sexual exploitation or as cheap labour. To achieve this objective, organised crime groups act as intermediaries between migrants and unscrupulous businesspeople seeking to exploit the cheap labour generated by migrants, in some cases taking advantage of the inefficiency of law enforcement authorities in detecting these situations of vulnerability among migrants arriving illegally in the EU.

• **Perception of safety:** A decline in trust in public institutions in certain regions can lead to a lack of cooperation from the public with law enforcement agencies. In this context, organised crime groups act directly or through intermediaries, including by offering financial inducements to certain public officials, with the aim of damaging the image of law enforcement agencies in EU Member States. The public reacts to these external 'stimuli' by losing trust in these institutions, a factor that leads to the proliferation of organised crime due to a lack of cooperation between the public and the police.

T – Technological:

• **Artificial Intelligence (AI):** Used for deep fakes in financial fraud, the automation of cyber-attacks and the optimisation of logistics routes. Organised crime groups are increasingly using artificial intelligence to facilitate online fraud affecting citizens, companies and public institutions across the EU. Currently, the scale, variety and sophistication of online fraud are unprecedented, driven by artificial intelligence. At the same time, the (online) sexual exploitation of children is evolving, with generative AI being used to produce online material containing child sexual abuse, to secure online communities of offenders and to facilitate the expansion of online grooming of children. Another risk is posed by cyber-attacks targeting critical infrastructure, governments, companies and citizens. These attacks exploit specific vulnerabilities in digital infrastructure, taking advantage of system access data and targeting data theft to generate illicit profits. Advances in artificial intelligence will further refine the modus operandi and make it easier to identify targets of cyber-attacks.

• **Crime-as-a-Service (CaaS):** "The democratisation of crime", where groups can obtain and use specialised ransomware software or hacking experts via online channels such as the Dark Web.

• **Communication encryption:** The use of ultra-secure messaging platforms that make lawful interception virtually impossible without physical access to devices. Organised crime groups are increasingly concerned with securing their communications so that their members cannot be intercepted by law enforcement agencies or the police. In this context, organised crime groups are investing significant sums in developing their own secure communication technologies or adapting commercially available ones to meet their needs for secure communication that cannot be intercepted by law enforcement agencies.

E – Environment:

• **Environmental crimes:** The rise in illegal trafficking of toxic waste, illegal logging and poaching, which are becoming highly profitable markets due to stricter green regulations. Illegal waste management is a financially motivated crime that maintains close links with the legal waste management sector and employs experts from within it. The

involvement of organised crime groups in waste trafficking, particularly of highly toxic waste, brings significant benefits to these groups, but, on the other hand, has a negative impact on the environment, the economy and the health and safety of EU citizens. At the same time, illegal logging and poaching allow organised crime groups to consolidate their position in the illicit market and to obtain illicit funds that can be used in other areas of interest to them.

• **Impact of drug laboratories:** Soil and water pollution through the discharge of chemical waste from the production of synthetic drugs (particularly in the Netherlands and Belgium). Organised crime groups specialising in the production and trafficking of synthetic drugs are not concerned with compliance with environmental legislation, being interested in the disposal, in any form, of chemical waste resulting from the production process, in order to avoid the identification of these illegal laboratories by anti-drug authorities in EU Member States.

L – Legal:

• **Asymmetrical legal regulations:** Discrepancies in penalties for the same offences across different EU countries allow groups to base their operations in more lenient jurisdictions. In this regard, organised crime groups choose Member States where penalties for specific illicit activities are not as severe.

• **Crypto regulation (MiCA):** New European laws aim to close financial loopholes, but their technical implementation is lagging behind the pace of criminal innovation. Organised crime groups have the ability to adapt rapidly to the measures put in place by European and national authorities to make financial transfers via crypto currencies more transparent.

• **Extradition challenges:** Complex and lengthy legal proceedings make it difficult to bring criminal leaders operating from outside the EU (for example, from Dubai or Latin America) to justice. In this context, members of organised crime groups choose to flee to these states, which apply cumbersome extradition procedures, relying on these relaxed regulations through which they can escape punishment for a very long time or even permanently, through the statute of limitations.

A *SWOT analysis of cross-border organised crime* allows for an accurate assessment of the criminal phenomenon generated by organised crime within EU Member States, and across the entire European Union, and for the identification of proactive measures that can be taken to effectively counter the proliferation of organised crime groups.

S – Strengths	W – Weaknesses
• **Legislative and institutional framework:** The existence of specialised agencies such as Europol (police cooperation), Frontex (cooperation between border police forces), Eurojust (judicial cooperation) and the EPPO (European Public Prosecutor's Office for the protection of the EU budget). • The **EMPACT platform:** A multidisciplinary cooperation model enabling EU Member States to prioritise and jointly	• Legislative fragmentation: Differences between national criminal codes create legal loopholes that criminal networks exploit to avoid extradition or the confiscation of assets. • Infiltration of the legitimate economy: Over 80% of criminal groups use legitimate businesses as a front, making them extremely difficult for law enforcement agencies to detect using traditional methods.

tackle major threats (drug trafficking, cybercrime, etc.). • **Financial resources:** Substantial budgets allocated to border security (Frontex) and the digitalisation of law enforcement agencies across EU Member States. • **High resilience:** Europe has the highest resilience index globally (6.28), thanks to its consolidated democracy and the rule of law.	• Bureaucracy: Data-sharing processes between 27 states can be slower than the pace at which criminal networks, which make extensive use of digital tools, adapt. • Shortage of specialist staff: A lack of experts in cyber-investigations and complex financial analysis within many national police forces.
O – Opportunities	**T – Threats**
• **Artificial Intelligence (AI):** Using 'predictive policing' algorithms and big data analysis to identify suspicious financial flows before funds disappear into tax havens. • **Expanding the EPPO's powers:** Strengthening the authority of the European Public Prosecutor's Office could drastically reduce fraud involving European funds and cross-border VAT fraud. • **International partnerships:** Strengthening cooperation with key transit countries (in the Western Balkans or Latin America) to dismantle criminal networks at source. • **Strict regulations on cryptocurrencies:** Implementing the MiCA regulation to limit the use of cryptocurrency-generated assets in money laundering.	• Criminal use of AI: Generation of deepfakes for major financial fraud, automation of cyberattacks and advanced encryption of communications. • High-level corruption: Infiltration of strategic ports (e.g. Rotterdam, Antwerp, Constanța) and border crossing points by corrupting key personnel within control structures. • Geopolitical context: The war in Ukraine and instability in the Middle East are creating new trafficking routes (e.g. weapons, people) and diverting security resources away from economic and financial crime. • Agility and flexibility of networks: Modern criminal groups no longer have a pyramidal structure (rigid hierarchy), but are fluid networks with no clear 'leaders', making them almost impossible to completely dismantle in a single operation.

Main characteristics of organised crime at the european union level. Europol has identified 821 dangerous criminal networks operating within the EU, most of which have a transnational structure and have been active for over 10 years. Organised crime generates billions of euros in profits annually across the EU. In 2024, coordinated actions through the EMPACT platform led to over 12,000 arrests and the seizure of assets worth €1 billion. Over 80% of organised crime networks use legitimate business structures to conceal their illicit activities, particularly in the logistics, transport and hospitality sectors [3]. Criminal groups are present in all European Union countries and often operate across borders; 70% of organised criminal groups are, in fact, active in more than three Member States [4].

Recently, Europe has become a global "hotspot" for technology-dependent crime, and the IOCTA 2024 Report, produced by Europol, highlights the fragmentation of threats due to the use of Artificial Intelligence for phishing and malware attacks [5]. Artificial Intelligence has become a "game changer" in many areas, including cross-border organised crime, in the sense that criminal groups are using new technologies to gain an advantage

over law enforcement agencies, including in relation to social engineering, recruitment, complex fraud, the production of child sexual exploitation material and cyber-attacks on critical infrastructure.

The European Council has identified the following seven EU priorities in the field of crime for the 2026-2029 EMPACT cycle: These priorities take account of the fact that serious and organised crime is gradually destabilising our societies (for example, through the spread of violence and corruption), is increasingly taking place online, and is being greatly accelerated by artificial intelligence and other new technologies. These priorities are: identifying and dismantling the criminal networks and individuals posing the greatest threat; tackling the fastest-growing crimes in the online environment: cyber-attacks, online child sexual exploitation and online fraud schemes; combating drug trafficking; combating migrant smuggling and human trafficking; combating offences involving firearms and explosives; dismantling networks involved in environmental crime; combating economic and financial crime, such as VAT fraud and intellectual property offences [6].

To mitigate the risks posed by organised crime, the following measures must be implemented:

- Increasing funding for European organisations responsible for combating organised crime and managing the EU's external border, namely Europol, which acts as an information hub and provides technical and analytical support to EU Member States, and Frontex, the agency responsible for controlling the EU's external borders;

- Enhancing the European Multidisciplinary Platform Against Criminal Threats (EMPACT) for the period 2026–2029, which has already established clear priorities, namely a focus on preventing cyber-attacks and reducing high-risk drug trafficking;

- Increasing the level of inter-institutional cooperation within EU Member States, specifically between police, customs, tax authorities and EU agencies (Europol, Eurojust, Frontex, EPPO) to streamline the process of dismantling cross-border organised crime groups;

- Carrying out checks in areas with a high risk of criminal activity, namely major European ports, to inspect containers arriving from third countries that are used to conceal drug or human trafficking, taking advantage of the very large volume of goods that must be processed within a very short timeframe;

- Stepping up the exchange of operational intelligence with countries in South America (e.g. Brazil, Ecuador) to combat maritime drug trafficking routes to European ports, as well as with other countries in the Middle East and North Africa (MENA) region, in particular to reduce illegal migration and human trafficking from these highly sensitive areas, as well as with certain countries in the Western Balkans, which act as a hub for drug and arms trafficking;

- The continuation of large-scale programmes connecting law enforcement agencies across different continents, namely EL PAcCTO 2.0 and CRIMJUST – these initiatives facilitate the creation of Joint Investigation Teams (JITs) between Latin American countries (e.g. Peru and Bolivia in 2025) and EU Member States, providing common regional standards for evidence gathering in cases of transnational organised crime and EU ACT (2023–2028) – a €19 million programme focusing on heroin routes from Afghanistan, which provides tailored technical assistance to partner countries along the route to disrupt illicit financial flows;

- Identifying high-risk countries in terms of money laundering, with the aim of requiring banking institutions to exercise heightened vigilance in transactions with these

entities;

- Amending legislation in EU Member States that does not sufficiently penalise offences specific to cross-border organised crime, possibly by producing a European Commission-level guide recommending certain minimum penalties across all EU Member States.

Conclusions. Cross-border organised crime poses serious risks to European security and to the national security of EU Member States. Recent changes in organised crime stem from criminal groups adopting online methods by shifting criminal activities to the online environment or using new information technologies to diversify their criminal methods.

Organised crime groups have become highly adaptable, capable of rapidly adjusting their criminal methods to counter the actions and operations carried out by European and national law enforcement authorities.

In order to effectively combat cross-border organised crime, European and national authorities need to step up the exchange of information both at national level and between EU Member States; however, it is becoming increasingly important for this exchange of information to also take place with third countries that pose a risk of crime at EU level.

Another priority is to increase funding for law enforcement agencies in EU Member States, as well as for European institutions responsible for combating cross-border organised crime (e.g. Europol, Frontex). The allocation of additional resources will help to reduce crime across the European Union, whilst improving the institutions' image among the public.

Without proactive measures being taken by EU Member States and European institutions, organised crime will proliferate, and the consequences for European society will be particularly severe.

The work initiated by this scientific research is to be continued by the authors to identify the structural changes that have occurred within organised crime groups and their impact on criminal behaviour.

Bibliographical references

1. Europol. The changing DNA of serious and organised crime. The Hague, 2025. Available: https://www.europol.europa.eu/cms/sites/default/files/documents/EU-SOCTA%202025%20-%20Rezumat.pdf (accessed 25.04.2026).
2. Government of Romania. National Strategy against Organised Crime 2021–2024. Bucharest, 2021. Available: https://atop.pmb.ro/sites/default/files/Strategia%20Nationala%20impotriva%20criminalitatii%20organizate%202021-2024.pdf (accessed 25.04.2026).
3. Europol. Decoding the EU's most threatening criminal networks. The Hague, 2024. Available:https://www.europol.europa.eu/cms/sites/default/files/documents/RO_Decoding%20Report%20%E2%80%94%20Rezumat.pdf (accessed 25.04.2026).
4. Nucă N. Organised Crime. Prevention and Combating Techniques. 2024. Available: https://www.juridice.ro/722637/criminalitatea-organizata-tehnici-de-prevenire-si-combatere.html#:~:text=Criminal%20groups%20are%20present%20%C3%AEn%20all%20%C8%9B%C4%83rile,%C3%AEn%20more%20than%20three%20Member%20States (accessed 25.04.2026).
5. Europol. Internet Organised Crime Threat Assessment (IOCTA) 2024. The Hague, 2025 (accessed 25.04.2026).
6. European Council. Council defines the EU's crime-fighting priorities for the coming years. Brussels, 2025.

UDC 343.85:343.32(477)(02) **DOI: https://doi.org/10.5281/zenodo.20793852**

COLLABORATIVE ACTIVITY IN UKRAINE THROUGH THE LENS OF CRIMINAL LAW: FROM CRIME RECORDING TO SENTENCING

Yevhen PYSMENSKYY,
PhD, University Professor,
Vice-Rector for Research,
Academician I.M. Lutskyi, King Danylo University,
Ivano-Frankivsk, Ukraine
ORCID: 0000-0001-7761-7103

Abstract

The study examines quantitative indicators of criminal law measures against collaborative activity in Ukraine from March 2022 to 2025, covering the period of martial law imposed in response to the full-scale invasion by the Russian Federation. The empirical basis consists of official statistical data from the Office of the Prosecutor General and the State Judicial Administration of Ukraine on crimes against Ukraine's national security, pre-trial investigations, and final convictions for collaborative activity under Article 111-1 of the Criminal Code of Ukraine.

The analysis traces the full enforcement chain – from the registration of criminal offences and notification of suspicion through referral of proceedings to court and adoption of final judicial decisions, including the imposition of punishment. The study identifies three qualitatively distinct stages of criminal law response: a pre-2022 period of largely declaratory application; an unprecedented surge in registrations following the full-scale invasion; and a gradual systemic stabilisation characterised by growing conviction rates from 2023 onwards.

Based on the findings, the study draws conclusions regarding systemic imbalances in law enforcement practice and formulates recommendations aimed at improving criminal law policy in the context of countering collaborationism during armed conflict.

Keywords: Ukraine, criminal law, criminal justice, national security, collaborative activity, martial law, law enforcement.

ACTIVITATEA COLABORATIVĂ ÎN UCRAINA PRIN PRISMA DREPTULUI PENAL: DE LA ÎNREGISTRAREA INFRACȚIUNILOR LA CONDAMNARE

Abstract

Studiul examinează indicatorii cantitativi ai măsurilor de drept penal împotriva activității de colaborare în Ucraina în perioada martie 2022–2025, acoperind intervalul stării de război instituite ca răspuns la invazia pe scară largă a Federației Ruse. Baza empirică este constituită din date statistice oficiale ale Oficiului Procurorului General și ale Administrației Judiciare de Stat a Ucrainei privind infracțiunile împotriva securității naționale a Ucrainei, investigațiile preliminare și condamnările definitive pentru activitate de colaborare prevăzute la articolul 111-1 din Codul penal al Ucrainei.

Analiza urmărește întregul lanț de aplicare a legii – de la înregistrarea infracțiunilor și notificarea suspiciunii, până la trimiterea cauzelor în instanță și adoptarea hotărârilor judecătorești definitive, inclusiv aplicarea pedepselor. Studiul identifică trei etape calitativ distincte ale reacției dreptului penal: perioada anterioară anului 2022, caracterizată printr-o aplicare în mare parte declarativă; o creștere fără precedent a înregistrărilor după invazia pe scară largă; și o stabilizare sistemică graduală, caracterizată prin creșterea ratelor de condamnare începând cu anul 2023.

Pe baza constatărilor, studiul formulează concluzii privind dezechilibrele sistemice din practica aplicării legii și propune recomandări menite să îmbunătățească politica penală în contextul combaterii colaborationismului în timpul conflictului armat.

Cuvinte-cheie: Ucraina, drept penal, justiție penală, securitate națională, activitate de colaborare, stare de război, aplicarea legii.

Introduction. Over the twenty-five-year period of validity of the Criminal Code of Ukraine (hereinafter – the CCU), the criminal law provisions concerning liability for offences against the foundations of national security have undergone substantial changes in the context of the Russo-Ukrainian war, which began in 2014 with the seizure of Crimea and continues to this day [2; 5; 8; 10].

A significant milestone in the struggle for the consolidation of Ukrainian statehood was the full-scale invasion of Ukraine by Russian troops on 24 February 2022. Since that time, martial law has been introduced in Ukraine and remains in force. This phase of the war became a distinct and powerful factor contributing to the intensification of legislative activity, particularly in the sphere of criminal law protection of Ukraine's national security [6; 12; 17]. It was precisely with the onset of full-scale open aggression that a number of new criminal law provisions concerning offences against the state and its interests were introduced into Ukrainian legislation. One of these innovations was Article 111-1 of the CCU, which establishes liability for such a form of treasonous conduct as collaborative activity (collaborationism) [1; 7; 9; 16; 21]. This provision has remained unchanged to date and is actively relied upon in law-enforcement practice.

It is important to emphasize that, during the initial stage of Russian aggression against Ukraine, the formation of Ukraine's legal policy in the sphere of de-occupation of part of its territory and its subsequent reintegration was largely characterized by uncertainty and the absence of a unified, clear, and balanced position regarding persons who, in one way or another, cooperated with the aggressor state [15, p. 418]. Therefore, the introduction of the relevant prohibition constitutes a considerable achievement of the lawmakers, since it ensures the differentiation of criminal liability for betrayal of one's state in the form of cooperation with the enemy, which, as a general rule, occurs under conditions of occupation [14, p. 115]. The context of occupation justifies the application to collaborators of more lenient criminal law measures in comparison with the general provision on high treason (Article 111 CCU) [11].

The criminal law norm establishing liability for collaborative activity (Article 111-1 CCU) is comprehensive in nature and distinguishes between various forms of cooperation with the enemy depending on the sphere of such activity (informational, political, educational, administrative, military, etc.) (See Table).

Parts of Article 111-1 CCU	**Constituent Act**	**Type of Activity**	**Principal Punishment**	**Additional Punishment**
1	Public denial of armed aggression against Ukraine; calls to support the aggressor state or occupation administration; calls for cooperation with them or for non-recognition of Ukraine's sovereignty over temporarily occupied territory	Informational activity (public speeches, appeals) engaging in	Disqualification from holding certain offices or certain activities for 10 to 15 years	None

2	Voluntary occupation of a position not connected with managerial or administrative-economic functions in unlawful authorities	Administrative activity	Disqualification for 10 to 15 years	Confiscation of property or none
3	Propaganda in educational institutions aimed at facilitating aggression or introducing educational standards of the aggressor state	Educational activity	Corrective labour up to 2 years, or arrest up to 6 months, or imprisonment up to 3 years	Disqualification for 10 to 15 years
4	Transfer of material resources to illegal armed groups or conducting business activity in cooperation with the aggressor state	Economic and material assistance	Fine up to 10,000 tax-free minimum incomes or imprisonment from 3 to 5 years	Disqualification and confiscation of property
5	Voluntary occupation of leadership positions in unlawful authorities; participation in organizing illegal elections/referenda	Political and organizational activity	Imprisonment from 5 to 10 years	Disqualification and confiscation of property or none
6	Organization of political events or informational activity in cooperation with the aggressor state (without elements of treason)	Political and informational activity	Imprisonment from 10 to 12 years	Disqualification and confiscation of property or none
7	Voluntary occupation of positions in unlawful judicial/law-enforcement bodies; participation in armed formations of the aggressor state or assistance thereto	Service in coercive structures or participation in hostilities	Imprisonment from 12 to 15 years	Disqualification and confiscation of property or none

Since Article 111-1 CCU has remained stable, the question arises as to the effectiveness of its application within the framework of criminal law policy formulated by Ukrainian authorities. Existing criminal law studies in Ukraine indicate the presence of problems associated with the application of Article 111-1 CCU [3; 20; 22], among which is the actual effectiveness of criminal law protection in this sphere when assessed through key quantitative indicators of investigative and judicial practice.

The study of these indicators for the period 2022–2025 was conducted on the basis of statistical data from criminal justice authorities concerning offences against the foundations of Ukraine's national security, as well as information on pre-trial investigations

and final convictions for collaborative activity (Article 111-1 CCU).

In view of the foregoing, the purpose of this article is to provide a comprehensive analysis of the quantitative indicators of the application of criminal law measures for collaborative activity in Ukraine during the period of martial law (March 2022–2025), from the registration of criminal offences to the delivery of convictions, and to identify the principal trends in enforcement practice in order to formulate scientifically grounded recommendations for improving the effectiveness of criminal law counteraction to collaborationism.

The study employs a comprehensive approach combining legal and general scientific methods aimed at a thorough examination of the issue of criminal law counteraction to collaborative activity in Ukraine:

- **Dogmatic legal method** – applied to analyse the content and structure of Article 111-1 CCU, determine its place within the system of criminal law norms concerning treasonous conduct, and establish its relationship with related offences, namely high treason (Article 111 CCU) and aiding the aggressor state (Article 111-2 CCU);
- **Empirical method** – quantitative analysis of the practice of applying Article 111-1 CCU, based on official criminal statistics of the Office of the Prosecutor General of Ukraine and the State Judicial Administration of Ukraine [4; 13; 18; 19];
- **Statistical method** – used to calculate averages, shares, ratios, and trends, with charts employed for visual presentation of changes and comparative analysis;
- **Comparative legal method** – applied to compare indicators of criminal law response at different procedural stages, from registration to conviction, as well as to compare the practice of exemption from punishment for collaborators with general systemic indicators of Ukraine's criminal justice system, thereby revealing systemic disproportions and counter-trends in enforcement practice;
- **Illustrative method** – used for graphical representation of the dynamics of key indicators of criminal prosecution under Article 111-1 CCU in the form of charts demonstrating relationships between procedural stages and trends during the analysed period.

A critical (evaluative) approach was employed to analyse the effectiveness of criminal law policy, substantiate enforcement problems, and identify the imbalance between the declarative objectives of legislation and the actual practice of liability.

Criminal Law Protection of the Foundations of Ukraine's National Security. The relevant group of criminal offences is concentrated in Chapter I of the Special Part of the CCU, including Article 111-1 CCU on liability for collaborative activity. These offences are characterized by encroachments upon the most fundamental values: the constitutional foundations of existence, sovereignty, territorial integrity and inviolability of the Ukrainian state, as well as its defence capability and security. Accordingly, they are regarded as the most dangerous compared with other forms of criminally punishable conduct. Their increased harmfulness is primarily determined by the specific nature of the protected legal interest, namely the foundations of national security as a system-forming element of statehood.

At the same time, for a long period in Ukraine these criminal law provisions performed predominantly a preventive function, remaining, until the beginning of the Russo-Ukrainian war, an instrument of state protection that was rarely applied in practice. This is evidenced by an analysis of the key indicators of law-enforcement activity (see Figure 1).

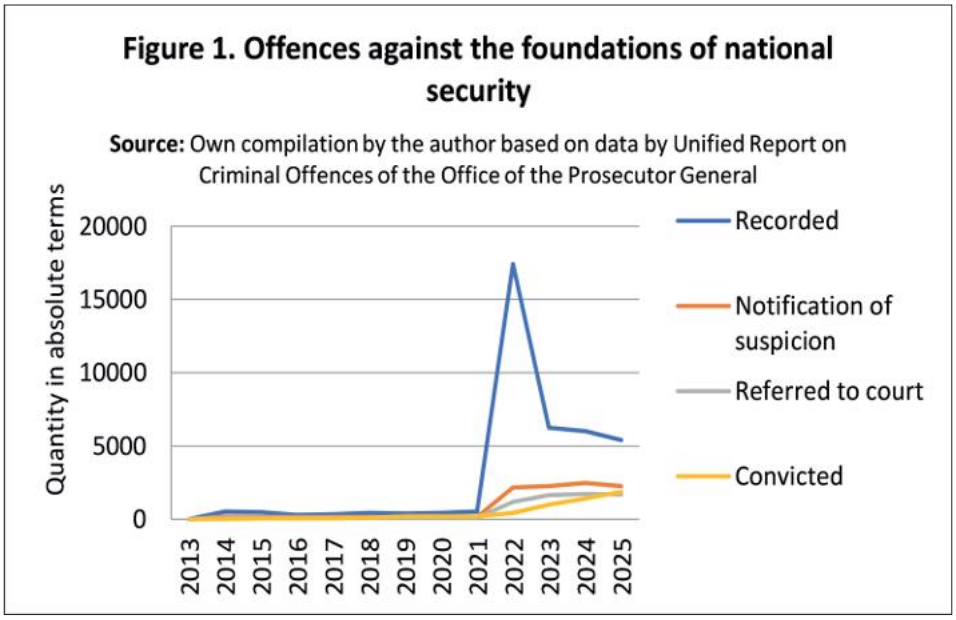


Figure 1. *Offences against the foundations of national security*

Statistics concerning offences against the foundations of Ukraine's national security for the period 2013-2025 clearly reveal three qualitatively distinct stages of the state's criminal law response.

Stage I (2013–2021) was characterized by relatively low and stable rates of recorded offences within this category (from 8 in 2013 to 520 in 2021), which confirms the thesis regarding the predominantly declarative nature of the relevant criminal law provisions during the pre-war period. Even after the outbreak of the armed conflict in 2014, when the number of registered proceedings increased to 527, the overall trend remained restrained, while conviction rates were extremely modest (31 persons convicted in 2014).

Stage II (2022) was marked by an unprecedented surge: the number of registered criminal offences increased more than thirty-three times compared with the previous year. At the same time, this indicator contrasted sharply with outcomes at subsequent stages of criminal proceedings: notices of suspicion were issued in respect of only 12.4% of registered cases, indictments were referred to court in 6.9%, and convictions were secured in merely 2.5%. At the initial stage of the full-scale invasion, the criminal justice system lacked sufficient resources to respond adequately to the volume of newly registered proceedings.

Stage III (2023–2025) reflects stabilization and gradual qualitative improvement in enforcement practice. The number of registered offences declined, whereas conviction indicators demonstrated sustained growth: 983 in 2023, 1,434 in 2024, and 1,871 in 2025. Significantly, in 2025 the number of judgments that entered into legal force exceeded the number of proceedings referred to court during that same year. This is explained by the completion of cases initiated in previous periods.

The foregoing data confirm that criminal law provisions establishing liability for offences against the foundations of national security acquired genuine practical significance only under conditions of full-scale armed aggression, while the effectiveness of their application remains in a state of dynamic, though still incomplete, development.

Dynamics of Detecting Collaborative Activity. Under Ukrainian criminal legislation (beginning in 2022), an entire system of criminal law provisions concerning treasonous conduct has emerged. The relationship among these offences is determined by a hier-

archical structure in which high treason (Article 111 of the CCU) constitutes the general norm, whereas aiding the aggressor state (Article 111-2 CCU) and collaborative activity (Article 111-1 CCU) function as special norms in relation to it. Most forms of collaborative activity (Parts 1-6 of Article 111-1 CCU) thereby constitute privileged forms of high treason. Aiding the aggressor state, however, frequently overlaps normatively with the provision on collaborative activity [15, p. 335].

All of these offences are united by a common specific legal object, namely the complex of vital values upon which Ukraine's national security is based (constitutional order, sovereignty, territorial integrity, etc.), which become the target of destructive treasonous conduct.

An analysis of the data presented in Figure 2, which reflects the registration of criminal offences related to treasonous conduct for the period 2022-2025, makes it possible to formulate several principal observations concerning the structure and dynamics of this category of proceedings.

Figure 2. Recording criminal offences of treasonous conduct

Source: Own compilation by the author based on data by Unified Report on Criminal Offences of the Office of the Prosecutor General

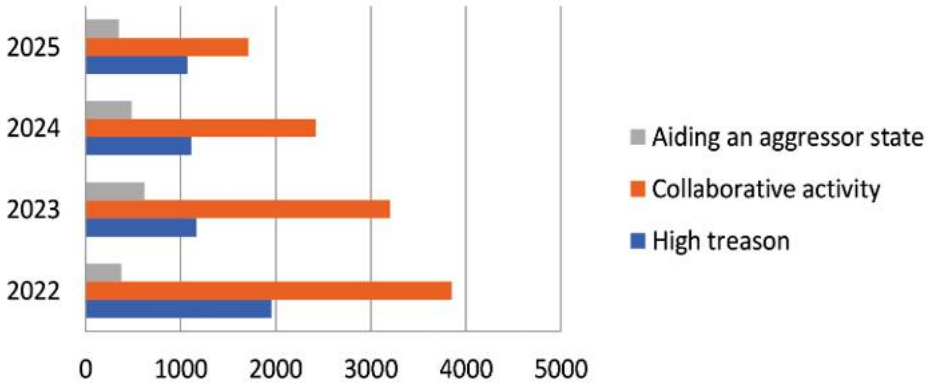


***Figure 2**. Recording criminal offences of treasonous conduct*

Throughout the analysed period, Article 111-1 CCU remained by far the most common basis for registration among the three examined provisions. The share of collaborative activity within the structure of registered treason-related offences consistently predominated, fluctuating between 60% and 64%. All three components of the examined body of offences demonstrate a stable downward trend. In particular, the number of proceedings under Article 111-1 CCU declined from 3,851 in 2022 to 1,714 in 2025, representing a decrease of more than half (55.5%) over four years.

At the same time, it should be understood that a reduction in the number of registrations does not unambiguously indicate a decline in the actual manifestations of treasonous conduct. Significantly, despite the absolute decrease in registrations across all three categories, their relative proportions remained practically unchanged throughout the analysed period. The share of high treason fluctuated from 31.6% (2022) to 37.7% (2025), while aiding the aggressor state ranged from 6.1% (2022) to 12.3% (2025).

The analysed data confirm that criminal law responses to collaborative activity remain in a state of gradual, though not yet completed, systemic stabilization, characterized

by a transition from the stage of mass initial registration of offences to the subsequent stage of their realization through substantive judicial determinations. Evidently, this process reflects the overcoming of the institutional imbalance of the first years of the full-scale invasion and the formation of a settled practice of legal assessment of various forms of treasonous conduct under conditions of prolonged martial law.

The State of Criminal Prosecution for Collaborative Activity. Pursuant to paragraph 14, part 1, Article 3 of the Criminal Procedure Code of Ukraine, criminal prosecution constitutes a stage of criminal proceedings that begins at the moment a person is formally notified of suspicion in the commission of a criminal offence. From the perspective of substantive criminal law, prosecution represents the initial form of the implementation of criminal liability, which is fully realized only upon the delivery of a conviction by a court.

An analysis of the data presented in Figure 3, reflecting the relationship between the number of registered proceedings and the number of notices of suspicion issued for collaborative activity during 2022-2025, makes it possible to identify fundamentally important patterns at the stage of criminal prosecution.

Figure 3. Notification of suspicion of collaborative activity

Source: Own compilation by the author based on data by Unified Report on Criminal Offences of the Office of the Prosecutor General

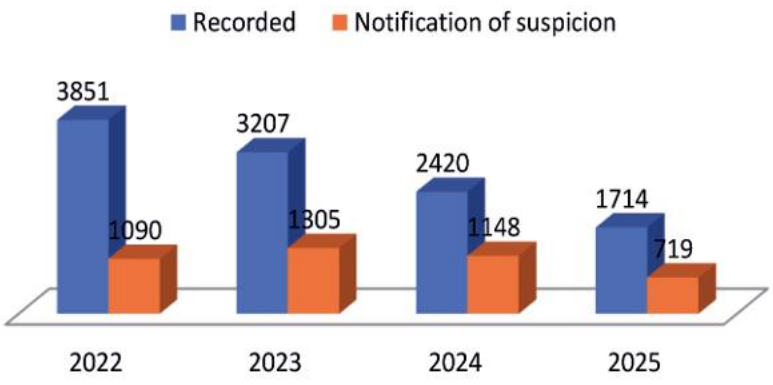


***Figure 3**. Notification of suspicion of collaborative activity*

Over the entire analysed period, out of 11,192 registered proceedings under Article 111-1 of the CCU, notices of suspicion were issued in 4,262 cases, representing 38.1% of the total volume. Thus, more than six out of ten registered proceedings fail to reach criminal liability even in its initial form. At the same time, this indicator functions as an important "filter" within the system of criminal law response to collaborative activity.

Particular attention should be paid to the dynamics of the transformation rate, that is, the proportion of notices of suspicion relative to the number of registered proceedings in each respective year. In 2022, this indicator amounted to 28.3% (the lowest value), reflecting the objective inability of pre-trial investigative bodies to process the unprecedented number of registrations during the first year of the full-scale invasion. In 2023, a noticeable improvement occurred, as the indicator rose to 40.7%. In 2024, the highest value for the entire period was recorded—47.4%—which may indicate both a qualitative improvement in investigative practice and the natural "maturation" of investigations initiated in previous years.

From a criminal law perspective, the identified imbalance between the registration stage and the stage of notification of suspicion has at least two dimensions. The first concerns the quality of initial registration: it cannot be excluded that some proceedings under Article 111-1 CCU are initiated at the registration stage on the basis of information that is not subsequently confirmed during the investigation. The second aspect relates to the specific nature of Article 111-1 CCU: in particular, a significant proportion of persons in respect of whom proceedings are registered remain in temporarily occupied territories or outside Ukraine, thereby making the achievement of pre-trial objectives impossible.

Closure of Criminal Proceedings Concerning Collaborative Activity at the Pre-Trial Investigation Stage. The closure of criminal proceedings consists in the final termination of criminal prosecution without referral of the case to court for substantive consideration. In general terms, closure constitutes legal confirmation at the pre-trial stage of the impossibility of implementing criminal liability, thereby serving as a key safeguard against arbitrariness and as an instrument for the rational use of state resources. Relevant grounds may include the absence of the event of a crime, the absence of constituent elements of an offence, the death of the suspect, and similar circumstances.

An analysis of the data presented in Figure 4, reflecting the dynamics of the closure of criminal proceedings concerning collaborative activity at the pre-trial stage during 2022–2025, makes it possible to identify another fundamentally important characteristic of the established enforcement practice.

Figure 4. Closure of proceedings for collaborative activity by pre-trial investigation authorities

Source: Own compilation by the author based on data by Unified Report on Criminal Offences of the Office of the Prosecutor General

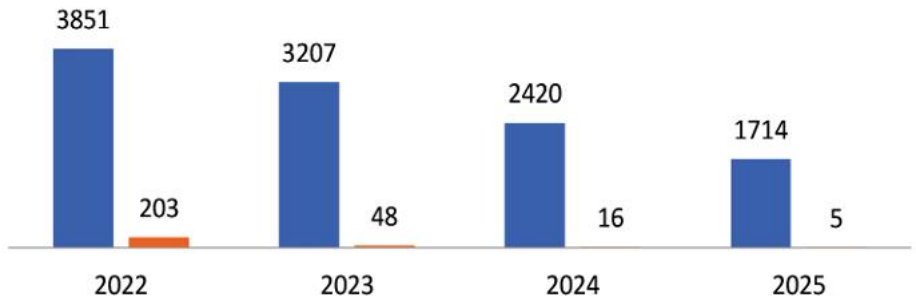


***Figure 4**. Closure of proceedings for collaborative activity by pre-trial investigation authorities*

Over the entire four-year period, out of 11,192 registered proceedings under Article 111-1 CCU, pre-trial investigative bodies closed only 272 cases, representing merely 2.43% of the total number. The most revealing feature is not the absolute number of closed proceedings, but its dynamics. In 2022, 203 proceedings were closed (5.27% of registered cases); in 2023, 48 (1.50%); in 2024, 16 (0.66%); and in 2025, only 5 (0.29%). Over four years, the number of closed proceedings decreased by a factor of 40.6—from 203 to 5—and the pace of this reduction was consistently steep.

It is also important to compare the number of closed proceedings with the number of notices of suspicion issued within the same reporting year. In 2022, for every 1,090 notices of suspicion there were 203 closures, yielding a ratio of 1:5.4. In 2023, this ratio changed sharply: 48 closures to 1,305 suspicions (1:27.2). In 2024, there were 16 closures to 1,148 suspicions (1:71.8), and in 2025 only 5 closures to 719 suspicions (1:143.8).

This progressively increasing asymmetry indicates that investigative practice is becoming ever more oriented toward continuing proceedings and issuing notices of suspicion rather than terminating cases, even in circumstances where sufficient grounds for closure may well exist. Such a situation requires separate professional analysis.

The State of Referring Criminal Cases on Collaborative Activity to Court. In Ukraine, the completion of a pre-trial investigation through the referral of an indictment to court constitutes the final stage of pre-trial proceedings and demonstrates the existence of a sufficient evidentiary basis for the public substantiation of a person's guilt before a court. The transfer of case materials to court terminates the jurisdiction of the pre-trial investigative authorities and initiates the judicial stage of criminal proceedings.

Figure 5. Criminal cases referred to court for collaborative activity

Source: Own compilation by the author based on data by Unified Report on Criminal Offences of the Office of the Prosecutor General

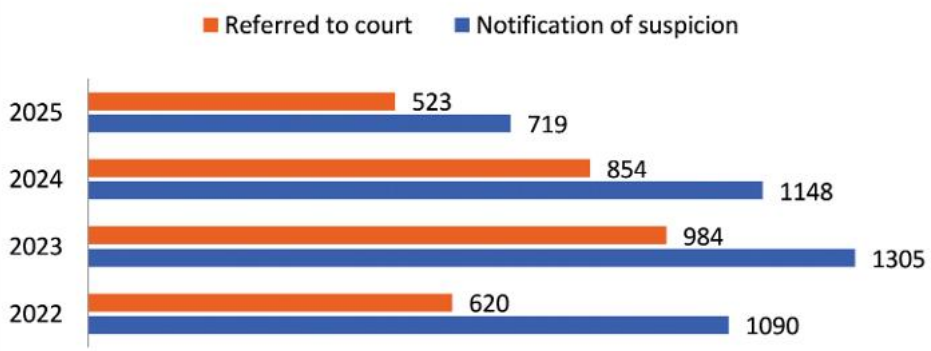


***Figure 5**. Criminal cases referred to court for collaborative activity*

An analysis of the data presented in Figure 5, reflecting the relationship between the number of notices of suspicion and the number of criminal cases referred to court for collaborative activity during 2022-2025, makes it possible to identify the patterns governing the transition from notification of suspicion to the commencement of judicial review.

During the analysed period, out of 4,262 cases in which a person was notified of suspicion, 2,981 were referred to court, representing 69.9% of the total number. This figure is significantly higher than the rate of transformation of registrations into suspicions (38.1%). Accordingly, a person notified of suspicion for collaborative activity appears before a court with a probability of nearly 70%, which serves as an indicator of relative procedural certainty once the stage of criminal prosecution has been reached.

In absolute terms, the number of cases referred to court fluctuated substantially: increasing from 620 in 2022 to 984 in 2023 (58.7%), followed by a moderate decline to 854 in 2024 (13.2%), and a more substantial decrease to 523 in 2025 (38.8%). The decline in 2025 should be viewed as a consequence of the reduction in the number of notices of suspicion issued in the same year (719 compared with 1,148 in 2024).

No less important is the analysis of cases that did not reach the stage of referral to court after a notice of suspicion had been issued. In 2022, such cases numbered 470 (43.1% of suspicions); in 2023, 321 (24.6%); in 2024, 294 (25.6%); and in 2025, 196 (27.3%).

Out of 11,192 registered proceedings, 4,262 reached the stage of suspicion (38.1%), while 2,981 reached the stage of referral to court (26.6% of the initially registered total). Nearly three quarters of all registered proceedings did not proceed to the judicial stage. At the same time, this indicator cannot be directly interpreted as a "failure" of the system: it reflects both procedurally justified filters operating at each stage of proceedings and objective structural limitations caused by the specific nature of investigating offences committed under conditions of occupation.

Thus, the stage of referral to court constitutes the relatively most effective link in the process of criminal law counteraction to collaborative activity: reaching nearly 70% transformation of suspicions into court proceedings, it demonstrates stable and comparatively high effectiveness.

Results of Judicial Consideration of Criminal Cases Concerning Collaborative Activity. The examination of judicial data on criminal cases under Article 111-1 of the CCU, broken down into three possible outcomes (conviction, acquittal, and termination of proceedings by the court), makes it possible to identify the principal tendencies of judicial practice (Figure 6).

Figure 6. Verdicts in court cases concerning collaborative activity

Source: Own compilation by the author based on data by Unified Report on Criminal Offences of the Office of the Prosecutor General

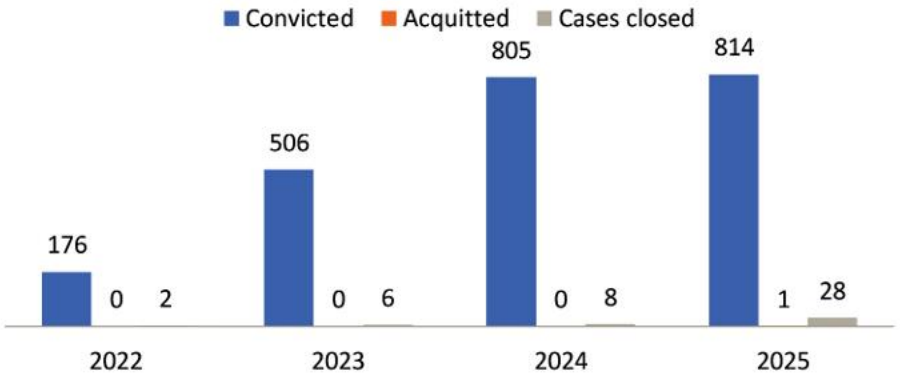


***Figure 6**. Verdicts in court cases concerning collaborative activity*

During the analysed period, courts considered a total of 2,346 cases concerning collaborative activity, resulting in 2,301 convictions (98.1%), 1 acquittal (0.04%), and termination of proceedings in 44 cases (1.88%). Such a structure of judicial outcomes is characteristic of offences against national security under conditions of martial law and reflects the general tendency toward a low acquittal rate in the criminal justice system of Ukraine.

The dynamics of the absolute number of convictions demonstrate consistent and significant growth between 2022 and 2024, unprecedented in pace—nearly a fivefold increase over two years. The practical stabilization of the indicator in 2025 (814 compared with 805 in 2024, an increase of only 1.1%) indicates the attainment of a certain plateau in the capacity of the judicial system to process this category of cases under the current operating model.

Of fundamental importance is the comparison between the number of convictions and the number of cases referred to court during the same reporting year. Evidently, beginning in 2025, courts were considering and concluding a substantial proportion of cases referred in previous years. This constitutes a classic manifestation of the temporal lag between the inflow of cases and their adjudication on the merits, characteristic of systems processing an accumulated caseload.

A comparison of the number of convicted persons with the initially registered proceedings under Article 111-1 CCU demonstrates that, over four years, 2,301 persons were convicted out of 11,192 registered proceedings, representing 20.6%. This progressive dynamic serves as a reminder that nearly eight out of ten registered proceedings do not result in a conviction. At the same time, the data in Figure 6 indicate that the judicial stage is the most predictable link in the criminal justice system's response to collaborative activity: cases reaching court end in conviction in 98.1% of instances, while the number of convictions demonstrates steady growth.

Implementation of Criminal Liability in Respect of Collaborators. The implementation of criminal liability encompasses the path from conviction to punishment and is decisive for assessing the effectiveness of the law. In Ukraine, this process is based on conviction and the imposition of punishment, which under criminal law may be actual (with execution of sentence) or nominal (with exemption from serving punishment). Statistical analysis of the relationship between these forms makes it possible to determine the factual nature and substance of liability imposed upon the offender.

An analysis of the data presented in Figure 7, reflecting the implementation of criminal liability for collaborative activity through the relationship between the number of convicted persons, the number of persons sentenced, and the number of persons exempted from punishment, makes it possible to move from a purely quantitative description of convictions to their relatively qualitative dimension—the actual substance of criminal liability imposed.

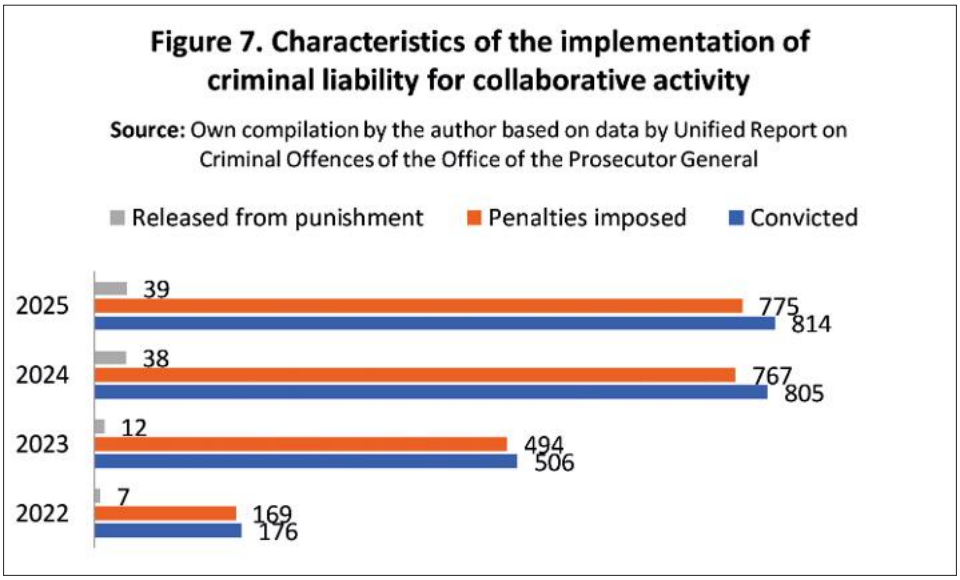


***Figure 7**. Characteristics of the implementation of criminal liability for collaborative activity*

Over the four-year period, out of 2,301 persons convicted under Article 111-1 CCU, punishment was imposed on 2,205 persons (95.8%), whereas 96 persons (4.2%) were exempted from punishment. Accordingly, the overwhelming majority of convictions result

in the actual imposition of punishment, while the practice of exemption remains relatively limited.

The dynamics of exemptions from punishment demonstrate a characteristic trajectory: 4.0% in 2022; 2.4% in 2023 (a decline of 1.6 percentage points); 4.7% in 2024 (an increase of 2.3 percentage points); and 4.8% in 2025 (practical stabilization, with growth of only 0.1 percentage points). In absolute terms, the number of exemptions increased at varying rates: from 7 in 2022 to 12 in 2023 (+71.4%), then to 38 in 2024 (+216.7%), and to 39 in 2025 (+2.6%). Stabilization in 2025 (39 versus 38 in 2024) corresponds with the general plateau reached in the number of convictions.

Particularly illustrative is the comparison of this indicator with the general practice of exemption from punishment within the criminal justice system of Ukraine. The total number of persons exempted from punishment for all criminal offences amounted to 21,077 in 2022, 28,892 in 2023, 22,228 in 2024, and 16,559 in 2025, demonstrating a stable downward trend: −23.1% in 2024 and −25.5% in 2025. By contrast, the number of collaborators exempted from punishment during the same period increased (from 7 to 39 persons, i.e., by a factor of 5.6), while their share in the total number of exemptions rose more than sevenfold—from 0.033% to 0.235%.

The implementation of criminal liability for collaborative activity is predominantly consistent: in 95.8% of cases, conviction results in the imposition of punishment. The stabilization of the share of exemptions at approximately 4.7–4.8% in 2024–2025 may reflect the emergence of a certain judicial standard regarding the application of relevant mitigating mechanisms; however, a full understanding of this tendency requires qualitative analysis of the grounds for exemption in specific cases.

Conclusions. The conducted study of the quantitative indicators of the application of criminal law measures for collaborative activity in Ukraine during 2022-2025 provides grounds for the formulation of the following conclusions.

1. Criminal liability for offences against the national security of Ukraine acquired genuine practical significance under conditions of full-scale armed aggression. Prior to 2022, criminal law provisions establishing liability for encroachments upon the foundations of national security performed predominantly a preventive function and were rarely applied in practice. The full-scale invasion created qualitatively new conditions for law enforcement, resulting in an unprecedented surge in the registration of relevant criminal offences.

2. The system of criminal law response to collaborative activity remains in a state of gradual but incomplete stabilization. The identified transition from the stage of mass initial registration to the stage of substantive implementation of criminal prosecution through convictions constitutes a positive tendency, indicating the overcoming of the institutional imbalance characteristic of the first months of the full-scale invasion. At the same time, the rate of transformation of registered proceedings into convictions remains relatively low: over four years, only 20.6% of the total number of registered proceedings resulted in convictions.

3. The effectiveness of criminal law counteraction to collaborative activity is uneven across different procedural stages. The principal bottleneck lies at the initial stage of criminal proceedings: only 38.1% of registered incidents are transformed into notices of suspicion. By contrast, the judicial stage is the most predictable and effective: 98.1% of cases reaching court result in convictions.

4. The progressive decline in the number of proceedings closed at the pre-trial investigation stage requires independent professional assessment. The reduction in

closures from 203 in 2022 to only 5 in 2025 (i.e., by a factor of 40.6), accompanied by an increase in the number of notices of suspicion, creates a growing asymmetry between these indicators. Such dynamics may indicate an orientation of investigative practice toward continuing proceedings under virtually any circumstances, thereby raising concerns regarding compliance with the principles of procedural economy and legality.

5. The practice of exempting collaborators from punishment is developing in a counter-trend to the general systemic tendency. Against the background of a consistent decline in the overall number of exemptions from punishment within the criminal justice system of Ukraine, the proportion of collaborators among persons exempted from punishment increased more than sevenfold—from 0.033% in 2022 to 0.235% in 2025.

6. The effectiveness of criminal law counteraction to collaborationism cannot be assessed exclusively through quantitative indicators. The analysis of statistical data reveals general tendencies and systemic disproportions; however, it does not answer the question of the soundness of specific decisions, whether at the pre-trial stage or during judicial proceedings. A comprehensive assessment of enforcement effectiveness requires the combination of quantitative analysis with qualitative examination of practice in individual cases.

The foregoing conclusions demonstrate that criminal law counteraction to collaborative activity in Ukraine remains in a state of dynamic formation of settled enforcement standards. Further enhancement of its effectiveness requires systematic improvement both of investigative practice—particularly in terms of the quality of initial registration and the substantiation of pre-trial decisions—and of judicial practice regarding the consistent application of criminal liability measures in proportion to the degree of social danger posed by the offence.

Bibliographical references

1. Bertash A.P. *The Content of Collaborative Activity: A Criminal Law Analysis*. In: Journal of Kyiv University of Law, No.3, 2024, (In Ukrainian), p.99-102.
2. Chuvakov O. A. *Crimes Against the Foundations of National Security of Ukraine: Problems of Criminal Law Theory and Practice*. Odesa: Feniks, 2017, (In Ukrainian).
3. Deputat D., Syniuk O., Lunova A., Pavliuk A., and I. Kapalkina. *Liability for Collaborationism: How Has Court Practice Changed? Analytical Report*. Kyiv, 2025, (In Ukrainian).
4. Karchevskyi M. *Combating Crime in Ukraine: Infographics: Interactive Reference*. 2024. Available: https://karchevskiy.com/i-dovidnyk/. (In Ukrainian).
5. Kolodin D.O., and Abakina-Piliavska L.M. *Certain Issues of Criminal Law Protection of National Security of Ukraine Under Martial Law*. In: Legal Position, No.2 (39), 2023, (In Ukrainian), p.117-120.
6. Kot O.O., Hryniak A.B., Milovska N.V., and Khomenko M.M., eds. *The Legal System of Ukraine under Martial Law: Collection of Scientific Papers*. Odesa: Helvetika Publishing House, 2022. (In Ukrainian).
7. Kravchuk O.O., Bondarenko M.S. *Criminalization of Collaborationism in Ukraine*. Available: https://doi.org/10.30525/978-9934-26-223-4-148.
8. Kvasha O.O. *Criminal Law Protection of State Security of Ukraine*. In: Almanac of Law, No.15, 2024, p. 44-51.
9. Kuznietsov V.V., Syiploki M.V. *Criminal Liability for Collaborative Activity as a New Challenge of Today*. In: Scientific Bulletin of Uzhhorod National University. Law Series, No.70, 2022, p.381-388.
10. Kuznietsov V.V., Syiploki M.V., Nesterova I.A. *Crimes Against the Foundations of Na-*

tional Security of Ukraine: New Challenges of Today. In: Analytical and Comparative Jurisprudence, No.1, 2023, p.483-489.
11. Marin O.K. *Criminal Law Variations of State Treason in the Criminal Code of Ukraine*. In: Law of Ukraine, No.11, 2022, p.60-75.
12. Matsola A.A. *Criminal Law Policy of Ukraine under Martial Law*. In: Scientific Bulletin of Uzhhorod National University. Law Series, No.91, pt.4, 2025, p.140-147.
13. Office of the Prosecutor General of Ukraine. *Unified Report on Criminal Offenses and the Results of Their Pre-Trial Investigation* (Form No. 1). Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2. (In Ukrainian).
14. Pysmenskyi Ye.O. *Collaborationism as a Socio-Political Phenomenon in Modern Ukraine (Criminal Law Aspects): Scientific Essay*. Sievierodonetsk, 2020.
15. Pysmenskyi Ye.O. *Criminal Law Problems of Combating Collaborative Activity: Monograph*. Kyiv: Alerta, 2024.
16. Pysmenskyi Ye., Hola B. *Exploring Criminalization and Prosecution of Wartime Collaboration – The Case of Ukraine*. In: European Journal of Criminology 23, No.1, 2026, p.84-109. Available: https://doi.org/10.1177/14773708251388357.
17. Skrypniuk O.V. *The Law of Ukraine During War*. In: Rule-of-Law State, No.34, 2023, p.3-19.
18. State Judicial Administration of Ukraine. *Report on Persons Brought to Criminal Liability and Types of Criminal Punishment* (Form No.6).
19. State Judicial Administration of Ukraine. *Report on the Composition of Convicted Persons* (Form No.7). Available: https://dsa.court.gov.ua/dsa/inshe/oddata/.
20. Supreme Court of Ukraine. Press Center. Available: https://supreme.court.gov.ua/supreme/pres-centr/news/1768002/.
21. Vasylenko Yu.V. *Collaborative Activity: Criminal Law Characteristics of the Elements of a Criminal Offense*. In: Journal of the Kyiv Institute of Intellectual Property and Law, No.1, 2022, p.3-8.
22. Analysis of Court Practice under Articles 111, 111-1, 111-2 of the Criminal Code of Ukraine for 2016–2022. JustTalk. Available: https://justtalk.com.ua/post/analiz-sudovoi-praktiki-za-stattyami-111-111-1-111-2-kk-ukraini-za-20162022-roki. (In Ukrainian).

CZU: 343.541.5-053.2(4EU:478) **DOI: https://doi.org/10.5281/zenodo.20794025**

CRIMINAL PROTECTION OF CHILDREN AGAINST SEXUAL ABUSE AND EXPLOITATION: THE EFFECTS OF LAW NO. 5/2026

Serghei BRÎNZA,
PhD Habilitated, University Professor,
Moldova State University
ORCID: 0000-0001-5937-3926

Vitalie STATI,
PhD, University Professor,
Moldova State University
ORCID: 0000-0003-1371-4961

Abstract

The study examines the impact of Law No. 5/2026, which entered into force on 26 February 2026 and through which the Moldovan legislator substantially revised the Criminal Code to transpose Directive 2011/93/EU. The law introduced essential definitions, such as "material relating to the sexual abuse of a child" (Art. 1324) and "pornographic performance" (Art. 1325). Chapters IV and VII of the Special Part of the Criminal Code of the Republic of Moldova were supplemented with provisions concerning: coercing a child for sexual purposes (Art. 1721); inducing a person under 16 to witness sexual acts or sexual conduct (art. 2083); involving a child in pornographic performances (Art. 2084); and inducing or coercing a child into prostitution (Art. 2085). Amendments are also introduced in other provisions of the Criminal Code, including Art. 159, 160, 171, 172, 173-1751, 208, 2081, 2082, and others. The study seeks to explain the substantive criminallaw changes brought by Law No.5/2026 and to assess the extent to which these reforms bring domestic criminal law closer to European standards.

Keywords: material relating to the child sexual abuse, pornographic performance, prostitution, state of helplessness, abuse of authority.

PROTECȚIA PENALĂ A COPIILOR ÎMPOTRIVA ABUZULUI ȘI EXPLOATĂRII SEXUALE: EFECTELE LEGII NR. 5/2026

Abstract

Studiul examinează impactul Legii nr. 5/2026, intrată în vigoare la 26 februarie 2026, prin care legiuitorul moldovean a revizuit substanțial Codul penal pentru a transpune Directiva 2011/93/UE. Legea a introdus definiții esențiale, precum „material privind abuzul sexual asupra unui copil" (Art. 132/4) și „spectacol pornografic" (Art. 132/5). Capitolele IV și VII din partea specială a Codului penal al Republicii Moldova au fost completate cu articole privind: constrângerea unui copil în scopuri sexuale (Art. 172/1); determinarea persoanei care nu a atins vârsta de 16 ani să asiste la acte sexuale sau la acțiuni cu caracter sexual (Art. 208/3); participarea unui copil la spectacole pornografice (Art. 208/4); determinarea sau constrângerea copilului la practicarea prostituției (Art. 208/5). De asemenea, au fost operate amendamente în alte articole din Codul penal al Republicii Moldova, și anume – în art. 159, 160, 171, 172, 173-175/1, 208, 208/1, 208/2 etc. Studiul urmărește să explice ce remanieri de natură juridico-penală aduce Legea nr.5/2026 și în ce măsură acestea reușesc să apropie dreptul penal autohton de standardele europene.

Cuvinte-cheie: material privind abuzul sexual asupra copilului, spectacol pornographic, prostituție, stare de neputință, abuz de autoritate.

Introduction. On 26 February 2026, Law No.5 of 12 February 2026 concerning amendments to several normative acts (hereinafter "Law No.5/2026") entered into force. The adoption of such a law had been scheduled for June 2025 in the Rule of Law Roadmap (a benchmark in the Republic of Moldova's EU accession process), approved by Government Decision No.275 of 14 May 2025. The purpose of this initiative was to align national legislation "with EU standards on combating child sexual abuse, the sexual exploitation of children and child pornography (Directive 2011/93) (hereinafter "the EU Directive" – A.N.)" [1]. The objective of transposing this EU act is expressly stated in the preamble to Law No. 5/2026. This study seeks to highlight the main effects of the law in question and to clarify the extent to which it succeeds in harmonising European commitments with the requirements of the criminal legislative system of the Republic of Moldova.

Methods and materials applied. In this study, we examine how Law No.5/2026 may influence the interpretation and application of criminal law provisions. To identify these effects, we compare the law's provisions with other relevant norms of the Criminal Code of the Republic of Moldova (hereinafter "CC RM") to identify where dysfunctions or uncertainties may arise. We also consider the regulatory framework as a whole, to understand how these norms fit within the current functioning of the criminal legislative system of the Republic of Moldova. At the same time, we rely on logical reasoning to formulate clear conclusions regarding the practical impact of the new law.

Discussions and results obtained. **1**. Art. 159 CC RM has been supplemented with paragraph (1^1), which provides as follows: "*The termination of a pregnancy, by a doctor or by another medical worker, by any means, carried out without the consent of the pregnant woman*" [2]. Similarly Art. 160 CC RM has been supplemented with paragraph (2^1), which provides as follows: "*The actions set out in paragraphs (1) or (2), committed by a doctor or by another medical worker, without the person's consent*" [2].

These amendments, introduced by Law No.5/2026, depart from the objective of transposing the EU Directive, as they in fact pursue the implementation of Art. 39 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention). In one of our earlier publications, we noted: "In the Criminal Code of the Republic of Moldova, Art. 39 of the Istanbul Convention corresponds to Art. 151 or 152 CC RM (with or without reference to Art. 27 CC RM). […] These provisions ensure adequate protection against forced abortion and forced sterilisation. There is no need to criminalise such acts at the level of *nomen juris*" [3]. We reiterate this thesis: the *nomen juris* criminalising does not, *per se*, amount to more effective criminalisation. This conclusion is grounded in the analysis that follows below.

Thus, before the entry into force of Law No.5/2026, the acts set out in Art. 159(1^1) and Art. 160(2^1) CC RM fell under Art. 151 or 152 CC RM (with or without reference to Art. 27 CC RM). The situation after the entry into force of the law is as follows: Art. 151 CC RM (with or without reference to Art. 27 CC RM) applies only to the termination of a pregnancy committed, without the victim's consent, by a person who does not possess the special status of doctor or medical worker; Art. 151 or 152 CC RM (with or without reference to Art. 27 CC RM) apply only to surgical sterilisation performed, without the victim's consent, by a person who does not possess the special status of doctor or medical worker.

If we compare the sanctions provided in Art. 159(1^1) CC RM and Art. 160(2^1) CC RM with those in Art. 151 or 152 CC RM (with or without reference to Art. 81(3) CC RM), we will find that situations may arise in which a doctor or medical worker is liable to a more lenient punishment than an unqualified perpetrator – a paradoxical outcome, given that a qualified subject would ordinarily be expected to face a more severe, not a more in-

dulgent, sanctioning regime. One might argue that such situations are acceptable, since a doctor or medical worker possesses greater training and diligence than other persons and, consequently, the risk to the victim's life would be lower. We consider such an approach to be overly simplistic.

First, Art. 159(1^1) and Art. 160(2^1) CC RM do not specify the medical specialty of the doctor or medical worker (a relevant gap: the law treats uniformly specialties with radically different levels of competence in obstetrics / gynaecology). For example, a medical worker in the field of psychiatry may qualify as a subject of the offences provided by these two provisions. We question whether any justification exists for this. Second – and more importantly – the acts set out in Art. 159(1^1) and Art. 160(2^1) CC RM may be committed: in the presence of medical contraindications for performing such a procedure; in unsanitary conditions; in non-specialised medical facilities, etc. When carried out under such circumstances, the termination of a pregnancy or the performance of surgical sterilisation poses an imminent risk to the victim's life, regardless of the status of the person who commits the act.

Nor can we overlook the following deficiency: the wording used in Art. 159(1^1) CC RM directly contradicts Art. 134^{15} CC RM, which expressly excludes doctors from the notion of "medical worker". Nevertheless, Art. 159(1^1) CC RM includes them, creating a rupture in legal logic and undermining the predictability of the provision. As for Art. 160 CC RM, it does not fall under Art. 134^{15} CC RM at all. This implicitly leads to qualifying a doctor as a medical worker solely for the offences provided in Art. 160 CC RM. The result is a definition applied selectively, without any intelligible criterion.

Accordingly, we propose the removal of paragraph (1^1) from Art. 159 CC RM and paragraph (2^1) from Art. 160 CC RM.

2. *The Criminal Code has been supplemented with article* 172^1, *entitled "coercion of a child for sexual purposes" [2]. The basic form of the offence consists of "coercing a child for the purpose of committing a sexual act or non-consensual sexual conduct in relation to a third party, where such acts do not meet the elements of child trafficking" [2].*

It cannot be argued that, before the entry into force of Law No.5/2026, the scenario described in Art. 172^1 CC RM fell entirely outside the scope of criminal law. We have repeatedly stated that rape or non-consensual sexual acts committed by two or more persons may be expressed, *inter alia*, in the commission of one of these offences "by a person who possesses the attributes of the perpetrator, through a person who does not possess those attributes" [4, p. 568; 5; 6]. Nevertheless, doubts persist regarding the applicability of the aforementioned aggravating circumstance where rape or non-consensual sexual acts are committed through a person (including a child aged 14 to 18) who is subjected to coercion within the meaning of Art. 39 CC RM. Furthermore, before the entry into force of Law No.5/2026, the coercion of a child to commit a sexual act or non-consensual sexual conduct against a third party required the act to be qualified as an attempt if the intended purpose was not achieved. Given the child status of the victim, such vulnerabilities in the criminal-law framework significantly reduced the level of protection against sexual abuse.

It should be noted that – both before and after the entry into force of Law No.5/2026 – Art. 206 CC RM applies only where the coercion of the child is accompanied either by the recruitment, transportation, transfer, harboring or receipt of the child, or by the giving or receiving of payments or benefits to obtain the consent of a person who exercises control over the child, for the purpose, *inter alia*, of commercial or non-commercial sexual exploitation. In cases involving the coercion of a child for the purpose of committing a sexual act or non-consensual sexual conduct in relation to a third party, the application

of Art. 206 CC RM would be unlawful. This constitutes an additional argument in favor of supplementing the Criminal Code with Article 172[1].

For all these reasons, we express our support for this addition inspired by Art. 3(6) of the EU Directive.

In order to ensure the uniform application of Art. 172[1] CC RM, we consider it necessary to formulate the following three clarifications:

1) The application of Art. 172[1] CC RM excludes the qualification of the act as rape or non-consensual sexual conduct committed by two or more persons let. d) of Art. 171(2) or let. d) of Art. 172(2) CC RM). This conclusion follows from Art. 116 CC RM;

2) A child aged between 14 and 18 is not held liable under Art. 171 or 172 CC RM only when the coercion exerted on them to commit a sexual act or non-consensual sexual conduct in relation to a third party meets the conditions laid down in Art. 39 CC RM. In the absence of these conditions, a child aged between 14 and 18 who is capable of directing their actions becomes liable under Art. 171 or 172 CC RM. Even in such a case, the person who coerces the child is liable under Art. 172[1] CC RM;

3) The subject of the offence provided in Art. 172[1] CC RM is a responsible natural person who, at the time of the act, has reached the age of 16. If the act described in this article is committed by a person aged between 14 and 16, the appropriate legal qualification is the one that applied before the entry into force of Law No.5/2026.

3. *It has become possible to aggravate criminal liability where the offences provided in Art. 159, 160, 171, 172 and 173 CC RM are committed "against a person in a state of helplessness resulting from advanced age, illness, disability or another factor"* [2].

This possibility was introduced through an amendment proposed by a member of the Parliament of the Republic of Moldova, supported by the following arguments: "The establishment of an aggravating circumstance concerning the exploitation of the victim's state of helplessness, resulting from age, illness, disability or another factor, is outlined in Directive 2011/93/EU, which obliges Member States to impose harsher penalties for acts committed against children in a situation of vulnerability" [7]. Indeed, point (ii) of Art. 3(5) of the EU Directive recommends the criminalization of "engaging in sexual activities with a child where [...] abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence" [8]. It should be noted that the Moldovan legislator did not take the victim's age into account when transposing this provision into Art. 159, 160, 171, 172 and 173 CC RM. Moreover, the offences provided in Art. 159 and 160 CC RM, do not fall within the scope of the EU Directive. However, the aggravation of criminal liability where "the offence was committed against a person made vulnerable by particular circumstances" [9] is suggested by point c) of Art. 46 of the Istanbul Convention. From this perspective, the introduction of the analyzed aggravating circumstance is justified, irrespective of the victim's age.

The question is whether the introduction of this aggravating circumstance has or has not generated dysfunctions within the system of criminal law. This question arises in relation to the offences provided in Art. 171 and 172 CC RM (and not in relation to the offences provided in Art. 159, 160 and 173 CC RM).

Let us begin with the fact that, according to Art. 132[2](3) CC RM, "a sexual act or sexual conduct is deemed non-consensual when it is accompanied by physical or psychological coercion applied to the victim or to another person, or when advantage is taken of the person's inability to defend themselves or to express their will" [2]. Thus, taking advantage of the victim's inability to defend themselves or to express their will constitutes one of the alternative mandatory conditions for liability for rape or non-consensual sexual acts.

What is the difference between taking advantage "of the person's inability to defend themselves or to express their will" (Art. 132²(3) CC RM) and committing the offence "against a person in a state of helplessness resulting from advanced age, illness, disability or another factor" let. h) of Art. 171(2) and let. g) of Art. 172(2) CC RM)? [2] The difference between these two scenarios is merely formal, not substantive. This amounts to a breach of the rule laid down in let. d) of Art. 54(1) of Law No.100/2017, according to which, in the text of a draft normative act, "the same notions shall be expressed by the same terms" [10]. At first glance, this rule might appear to lack any practical value. But is that really the case?

Let. h) of Art. 171(2) CC RM provides for liability for rape (*i.e.*, a non-consensual sexual act) committed "against a person in a state of helplessness resulting from advanced age, illness, disability or another factor" [2]. The provision presupposes that, at the moment the sexual act is committed, the victim – being in a state of helplessness – is either physically or psychologically coerced, or advantage is taken of their inability to defend themselves or to express their will. We have already established above that the scenario of taking advantage "of the person's inability to defend themselves or to express their will" (art. 132²(3) CC RM) does not differ from the scenario of committing the offence "against a person in a state of helplessness resulting from advanced age, illness, disability or another factor" let. h) of Art. 171(2) CC RM) [2]. This means that, in accordance with Art. 3(2) CC RM, Art. 171(1) CC RM must be applied (and not let. h) of paragraph (2) of that article) where the sexual act is committed against a person in a state of helplessness resulting from advanced age, illness, disability or another factor. Thus, it follows that, in fact, let. h) of Art. 171(2) CC RM may be applied only when, at the moment the sexual act is committed, the victim in a state of helplessness is subjected to physical or psychological coercion. Similar conclusions apply to let. g) of Art. 172(2) CC RM.

Consequently, it may be stated that the Moldovan legislator has transposed, in an inefficient manner, the provisions of point (ii) of Art. 3(5) of the EU Directive and point c) of Art. 46 of the Istanbul Convention. What could the solution be? We consider that a revision of art. 132²(3) CC RM is necessary. To this end, we propose that the Art. 132²(3) CC RM be reformulated as follows: "A sexual act or sexual conduct shall be deemed non-consensual when it is either accompanied by physical or psychological coercion applied to the victim or to another person, or is committed against a person who is in a state of helplessness resulting from advanced age, illness, disability or another factor. A sexual act or sexual conduct committed against a person who is in a state of helplessness resulting from advanced age, illness, disability or another factor entails liability under let. h) of Art. 171(2) or let. g) of Art. 172(2) of the Code". In this way, it will be clear that, for the application of these provisions of the art. 171 and 172 CC RM, it is not mandatory for the victim to be subjected to physical or psychological coercion.

4. *It has become possible to aggravate criminal liability where the offences provided in Art. 171-175¹, 208¹ and 208³ CC RM are committed "through an abuse of a position of authority over the victim"* [2].

This possibility was introduced through an amendment proposed by a member of the Parliament of the Republic of Moldova. In support of his initiative, he invoked the following arguments: "Regarding [...] the circumstance in which the perpetrator abused his position of authority over the victim, we note that the draft law does not fully cover all situations involving the commission of the act by persons in a recognized position of trust, authority or influence over the child, as required by the Directive. In this context, we observe that national legislation already covers, through its current formulations, the

positions of trust and influence referred to in the Directive. Nevertheless, in order to expressly cover the scenario of abuse of a recognized position of authority, which may also exist outside the framework of protection, education or care relationships, it is necessary to introduce a new, general aggravating circumstance that distinctly reflects the abuse of authority" [7]. Indeed, point (i) of Art. 3(5) of the EU Directive recommends the criminalization of "engaging in sexual activities with a child where [...] abuse is made of a recognized position of trust, authority or influence over the child" [8]. It should be noted that the Moldovan legislator did not take the victim's age into account when transposing this provision into Art. 171, 172 and 173 CC RM.

But this is not the essential point. What draws our attention is that, in parallel with the aggravating circumstance "through an abuse of a position of authority over the victim" [2], Art. 171-175[1], 208[1] and 208[3] CC RM also specify the aggravating circumstance "against a person who is in the care, under the guardianship, under the protection, in the education or in the treatment of the perpetrator" [2]. It is true that the wording "through an abuse of a position of authority over the victim" in these articles covers a narrower sphere than the point (i) of Art. 3(5) of the EU Directive. This partial transposition was likely intended precisely to avoid overlaps between the two scenarios under comparison. Nevertheless, such overlaps cannot be entirely excluded. We refer, *e.g.*, to the situation in which the victim is under the perpetrator's protection, meaning that the victim "is lawfully deprived of liberty [...], and the person who committed the offence has the duty to guard and supervise them" [11, p. 83].

As a result, we recommend introducing amendments to Art. 171-175[1], 208[1] and 208[3] CC RM. In order to fully transpose the point (i) of Art. 3(5) of the EU Directive, in all these articles the phrase "through an abuse of a position of authority over the victim" [2], should be replaced with the expression "through an abuse of a position of trust, authority or influence over the victim" [8]. At the same time, to avoid regulatory duplication, the aggravating circumstance "against a person who is in the care, under the guardianship, under the protection, in the education or in the treatment of the perpetrator", should be removed from Art. 171-175[1], 208[1] and 208[3] CC RM.

5. *The term "debauchery" has been removed from Art. 208 CC RM [2]. At the same time, the Criminal Code has been supplemented with Article 208[5], which criminalizes the act of "inducing or coercing a child into practicing prostitution"* [2].

It should be emphasized that, before the entry into force of Law No.5/2026, "inducing minors to debauchery (that is, to the practice of prostitution), committed by a person who had reached the age of 18, entailed liability under Art. 208 CC RM" [11, p. 248]. Inducing minors to debauchery, when committed by a person aged between 16 and 18, entailed liability under Art. 220 CC RM.

We consider the removal of the term "debauchery" from art. 208(1) CC RM [2], to be justified, since this term – most likely meaning "prostitution" – was susceptible to an unfavorable extensive interpretation. In this context, the solution of criminalizing, in Art. 208[5] CC RM, the acts of inducing or, respectively, coercing a child into prostitution is a consistent solution, intended to compensate for the removal of the term "debauchery" [2] from Art. 208(1) CC RM. At the same time, the new article provides a more appropriate framework for transposing paragraphs (5) and (6) of Art. 4 of the EU Directive. Moreover, the differentiation of liability in the two paragraphs of Art. 208[5] CC RM is appropriate, being grounded in the distinct degree of social danger posed by the incriminated acts.

It should be noted that Art. 208[5] CC RM may be applied only "if the act does not meet the elements of child trafficking". Thus, let. a) of Art. 206(1) CC RM provides for liability

for "the recruitment [...] of a child for the purpose of [...] commercial or non-commercial sexual exploitation [...]" [2]. Conversely, Art. 208[5](2) CC RM must be applied where such an act does not involve the recruitment of the child and/or where the prostitution to which the child is coerced does not amount to exploitation.

We further note that the application of Art. 208[5](1) CC RM excludes the qualification of the act under Art. 220 CC RM. This conclusion follows from Art. 116 CC RM.

6. *The Criminal Code has been supplemented with Article 132[4], which defines the notion of material relating to the sexual abuse of a child.*

We support this addition. Before the entry into force of Law No.5/2026, a similar definition of the notion of "child pornography" was included directly in the provision of art. 208[1] CC RM [2]. The entry into force of that law had the effect of decongesting Art. 208[1] CC RM. Thus, in accordance with the rule laid down in let. d) of Art. 54(1) of Law No.100/2017 – according to which, in the text of a draft normative act, "a notion shall be expressed by the corresponding term, and its definition shall be avoided" [10] – the definition of the notion of "material relating to the sexual abuse of a child" [2] is provided not in the incriminating norm, but in a separate criminal provision.

As regards the replacement of the phrase "child pornography" with the lexical construction "material relating to the sexual abuse of a child" [2], this shift is recommended in the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, developed in 2016 by the Interagency Working Group on Sexual Exploitation of Children (also known as the Luxembourg Guidelines). According to this document, "pornography is a term primarily used for adults engaging in consensual sexual acts distributed (often legally) to the general public for their sexual pleasure. Criticism of this term in relation to children comes from the fact that "pornography" is increasingly normalized and may (inadvertently or not) contribute to diminishing the gravity of, trivializing, or even legitimizing what is actually sexual abuse and/or sexual exploitation of children" [12]. It is therefore no coincidence that the European Parliament, in its Resolution of 11 March 2015 on child sexual abuse online, explicitly stated that "it is essential to use correct terminology for crimes against children, including the description of images of sexual abuse of children, and to use the appropriate term 'child sexual abuse material' rather than 'child pornography" [13].

Regarding the definition of the notion of material relating to the sexual abuse of a child, proposed for Art. 132[4] CC RM, it is inspired by the definition in let. (c) of Art. 2 of the EU Directive. This definition is clearer and more predictable than the descriptive provision that Art. 208[1] CC RM contained before the entry into force of Law No.5/2026.

It should be noted that Art. 132[4] CC RM does not incorporate the point (iii) of Art. 2(c) of the EU Directive, viewed considering Art. 5(7) of the same Directive. What is meant is the situation in which "a person appearing to be a child was in fact 18 years of age or older at the time of depiction" [8]. However, it must be emphasized that Art. 5(7) of the EU Directive is not mandatory. It is at the discretion of the Republic of Moldova to decide whether the analyzed provisions apply to cases involving child sexual abuse material.

In our view, the point (iii) of Art. 2(c) of the EU Directive, viewed considering Art. 5(7) of the EU Directive, should not be transposed into the Criminal Code of the Republic of Moldova. Our reservation concerns the phrase "a person appearing to be a child" [8]. First, in such a case, the offence is not directed against a minor victim. Yet only a minor can be a victim of the offences provided in Art. 208[1] CC RM. Second, the phrase "a person appearing to be a child" [8], is ambiguous. It is unclear whether the person depicted in the pornographic material appears to be a child because this is due to: (a) the anatomophysi-

ological characteristics of the adult in question; (b) the fact that the person is only slightly above the age of 18; or (c) the adult's simulation of minority or the artificial creation, by other means, of the appearance of minority. If the analyzed provisions of the EU Directive were to be transposed into domestic criminal law, there would be a risk of an unfavorable extensive interpretation of criminal law. We know that such interpretation constitutes a violation of Art. 7 of the European Convention on Human Rights. We take the view that the point (iii) of Art. 2(c) of the EU Directive (viewed considering Art. 5(7) of the EU Directive) could be transposed at a later stage within a different legislative proposal. Such amendments could eventually be incorporated into Chapter XI of the Special Part of the Criminal Code. In the same context, we consider that the unlawful circulation of material relating to sexual abuse in which the image of a child is entirely generated by artificial intelligence should also be criminalized.

7. *Art. 208[1] CC RM has been revised. Its previous title – "Child pornography" – has been replaced with the title "Circulation of material relating to the sexual abuse of a child" [2]. In addition, Art. 208[1] CC RM now contains four paragraphs instead of a single paragraph.*

We consider the reconfiguration of Art. 208[1] CC RM to be successful. The first two paragraphs of this article allow for an appropriate differentiation of the normative modalities of circulating material relating to the sexual abuse of a child, according to the degree of social danger posed by these modalities. The aggravating circumstances set out in Art. 208[1](3) CC RM likewise serves the purpose of a pertinent differentiation of criminal liability. Similarly, the inclusion of paragraph (4) in Art. 208[1] CC RM is appropriate. This paragraph is inspired by Art. 8(3) of the EU Directive, its purpose being to avoid the criminalization of situations without a real victim and without social danger, where such material is created or possessed between children exclusively for personal use.

8. *Art. 208[2] CC RM has been revised. This article, which criminalizes resorting to prostitution practiced by a child, now contains two paragraphs instead of a single paragraph.*

The amendment of Art. 208[2] CC RM was necessary, being inspired by Art. 4(7) of the EU Directive. Compared with Art. 208[2] CC RM in the version before the entry into force of Law No.5/2026, the current version of art. 208[2] CC RM: 1) has a broader scope, covering situations in which payment for sexual activities is made not only to the victim but also to a third party; 2) no longer makes liability conditional on the perpetrator's certainty regarding the victim's minority; 3) covers any form of remuneration or benefit granted to the victim, not only material advantages.

9. *The Criminal Code has been supplemented with Article 208[3], which, under the title "Inducing a person under the age of 16 to witness sexual acts or sexual conduct", establishes liability for two offences.*

The adoption of Art. 208[3] CC RM became necessary due to certain gaps generated by Law No.316/2022. Thus, before the entry into force of Law No.316/2022, the act criminalized in Art. 175 CC RM was described as follows: "perverse actions [...] consisting of exhibitionism, indecent touching, obscene or cynical discussions with the victim concerning sexual relations, inducing the victim to participate in or witness pornographic performances, providing the victim with pornographic materials, as well as other actions of a sexual nature" [2]. After the entry into force of Law No.316/2022, the phrase "consensual sexual conduct" [2] characterizes the harmful act provided in Art. 175 CC RM.

The phrase in question has the meaning established in Art. 132[2](2) CC RM. From this provision, three conditions emerge that the harmful act within the offence under art. 175 CC RM must meet: 1) it must involve obtaining sexual gratification – through direct contact or contact via an object – with the victim's body; 2) it must not constitute a sexual

act within the meaning of art. 132²(1) CC RM; 3) it must not fall under Art. 173 and 287 CC RM or Art. 354 of the Contravention Code. Therefore, the following cannot fall within the notion of "sexual conduct": knowingly inducing, for sexual purposes, a person under the age of 16 to witness sexual acts or sexual conduct, or to witness pornographic performances; obtaining direct or indirect profits from such activities; providing the victim with pornographic materials or material relating to the sexual abuse of a child; committing a sexual act or sexual conduct in the presence of a person under the age of 16. In such situations, Art. 206 CC RM likewise cannot be applied. This is because that article may be applied only where the minor victim is recruited, transported, transferred, harbored by the perpetrator, or where the perpetrator gives or receives payments or benefits to obtain the consent of a person who exercises control over the minor victim, for the purpose, *inter alia*, of commercial or non-commercial sexual exploitation.

We underline that Art. 208³ CC RM is modelled on art. 3(2)-(3) and Art. 4(2) of the EU Directive. The text of Art. 208³ CC RM is, for the most part, clear and foreseeable. Only paragraph (3) of this article raises reservations: "The consensual sexual act or consensual sexual conduct committed in the presence of a person who has not reached the age of 16" [2]. In the draft law approved at the Government meeting of 8 July 2024, this provision had a different content: "The sexual act or sexual conduct committed in the presence of a person who has not reached the age of 16" [14].

The question arises: how should rape or non-consensual sexual acts committed in the presence of a person under the age of 16 be qualified? The legislation in force does not reflect the serious psychological impact of exposing a minor to sexual violence. We consider that this gap may be addressed by supplementing Art. 171 and 172 CC RM with provisions under which liability would be aggravated if the offence is committed in the presence of a person who has not reached the age of 16.

10. The Criminal Code has been supplemented with article 208⁴, which, under the title "Participation of a child in pornographic performances", establishes liability for three offences. In the same context, the notion of a pornographic performance has been defined in Art. 132⁵ CC RM.

The provision of Art. 208⁴ CC RM is modeled on Art. 4(2)-(4) of the EU Directive. In turn, the definition of the notion of a pornographic performance is inspired by the definition in let. (e) of Art. 2 of the EU Directive. The adoption of Art. 208⁴ CC RM is justified by the essential distinction between material relating to the sexual abuse of a child (Art. 132⁴ CC RM), which concerns fixed visual representations, and a pornographic performance (Art. 132⁵ CC RM), which concerns live exposure, directed at an audience, of a child involved in explicit sexual behavior. Consequently, the separate criminalization of a child's participation in pornographic performances was indispensable to cover this autonomous form of sexual exploitation of children.

Conclusions. Law No.5/2026 marks an important step in strengthening the criminal protection of children and brings the normative framework of the Republic of Moldova closer to European standards. Although numerous amendments are necessary and well-founded, the analysis also reveals dysfunctions, overlaps, and risks of legislative incoherence. The effectiveness of the reform depends not only on expanding criminalisation, but also on the clarity, predictability, and efficiency of these provisions. The adjustments we propose in this study are essential for ensuring that the legislator's intention materialises into a functional, balanced criminal mechanism genuinely oriented toward the best interests of the child.

Bibliographical references

1. Hotărârea Guvernului Republicii Moldova pentru aprobarea Foii de parcurs privind „Statul de drept" (criteriu de referință în procesul de aderare a Republicii Moldova la Uniunea Europeană) nr. 275 din 14 mai 2025. În: Monitorul Oficial al Republicii Moldova, 20.05.2025, nr. 241-244 (284).
2. Codul penal al Republicii Moldova nr. 985 din 18 aprilie 2002. În: Monitorul Oficial al Republicii Moldova, 13.09.2002, nr. 128-129 (1012).
3. Brînza S., Stati V. *Implementarea Convenției de la Istanbul în legislația penală a Republicii Moldova și a României.* În: In Honorem Flavius Antoniu Baias: aparența în drept. Tomul I. București: Hamangiu, 2021, p. 622-634.
4. Brînza S., Stati V. *Tratat de drept penal. Partea specială. Vol. I.* Chișinău: Tipografia Centrală, 2015, 1328 p.
5. Brînza S., Stati V. *Săvârșirea infracțiunii de două sau mai multe persoane ca presupusă formă a participației penale: demitizarea unei concepții compromise*. În: Revista Națională de Drept, 2008, nr. 4 (91), p. 2-17.
6. Brînza S. *Teoria şi practica interpretării judiciare a normelor referitoare la infracţiunile privind viaţa sexuală* (*art. 171-175 CP RM*). În: Studia Universitatis Moldaviae (Seria Ştiinţe Sociale), 2010, nr. 8 (38), p. 156-211.
7. *Amendament la proiectul de lege nr. 223/2024 pentru modificarea unor acte normative (prevenirea și combaterea exploatării sexuale şi abuzurilor sexuale comise asupra copiilor*). Disponibil: https://www.parlament.md/preview?id=a9124e76-8f6c-40a9-966a-10e79ac879fd&url=https://ep-sp.parlament.md/materials/638558136080364178/Documents/20251203115958.pdf&method=GetDocumentContent (Accesat la 09.04.2026).
8. *Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA*. https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:32011L0093 (Accesat la 09.04.2026).
9. *Council of Europe Convention on preventing and combating violence against women and domestic violence*. https://rm.coe.int/168046253e (Accesat la 10.04.2026).
10. Legea cu privire la actele normative nr. 100 din 22.12.2017. În: Monitorul Oficial al Republicii Moldova, 12.01.2018, nr. 7-17 (34).
11. Brînza S., Stati V., Stratan A. *Drept penal. Partea specială: Compendiu.* Chişinău: Tipografia Centrală, 2025. 402 p.
12. *Terminology guidelines for the protection of children from sexual exploitation and sexual abuse*. Disponibil: https://www.ohchr.org/sites/default/files/TerminologyGuidelines_en.pdf (Accesat la 10.04.2026).
13. *European Parliament resolution of 11 March 2015 on child sexual abuse online* (2015/2564(RSP)). Disponibil: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015IP0070 (Accesat la 11.04.2026).
14. *Proiect de lege pentru modificarea unor acte normative (prevenirea şi combaterea exploatării sexuale și abuzurilor sexuale comise asupra copiilor*). Disponibil: https://www.parlament.md/preview?id=17165917-5dee-4ad2-96c7-0d03499abbdb&url=https://ep-sp.parlament.md/materials/638558136080364178/Documents/20240709131957.docx&method=GetDocumentContent (Accesat la 11.04.2026).

UDC 343.85:37.01 **DOI: https://doi.org/10.5281/zenodo.20794196**

THE ROLE OF LEGAL EDUCATION IN CRIME PREVENTION: INTERDISCIPLINARY PERSPECTIVES AND PEDAGOGICAL STRATEGIES

Mihaela-Corina BUCUR,
Romanian Society of Victimology – Founding Member, Jurist, Authorized Mediator,
Fundeni Sanitary Post-Secondary School – Tenured Professor, 2nd Degree,
Asanka Sante Medical Clinic – Manager,
Romania
ORCID: 0000-0001-8904-0436

Abstract

Crime prevention represents a social objective of major complexity, requiring a proactive paradigm capable of merging rigorous legal expertise with modern pedagogical methodology, moving beyond the limits of a purely coercive model. The present study investigates the fundamental role of legal education, viewed not merely as a transfer of legislative information, but as a catalyst for forming authentic civic responsibility and for restructuring the attitudinal profile of youth in the face of antisocial behavioral temptations. The analysis focuses on the transition from the rote memorization of norms toward advanced experiential learning strategies, such as simulated trials (Moot Courts), mediation workshops, and real-case study analysis, which allow students to decode the internal mechanisms of justice and anticipate the legal, social, and personal consequences of their own actions. The paper examines best practice models that emphasize synergistic collaboration between teaching staff, magistrates, lawyers, and law enforcement representatives, demonstrating that direct dialogue succeeds in demystifying the judicial system and significantly reducing the incidence of phenomena such as vandalism, juvenile delinquency, or cyberbullying. Research results highlight that internalizing legal values through interactive and participatory methods contributes decisively to promoting a safe school climate and to crystallizing solid ethical discernment, capable of guiding the individual in moments of crisis or social pressure. This interdisciplinary synergy between the legal and educational environments constitutes the fundamental pillar of a consolidated rule of law, ensuring the premises for a stable and equitable society, in which respect for the law ceases to be dictated by the fear of sanction, becoming a civic responsibility assumed through education and profound understanding.

***Keywords:** civic responsibility, juvenile delinquency, legal literacy, restorative justice, experiential learning, culture of legality, bullying.*

ROLUL EDUCAȚIEI JURIDICE ÎN PREVENIREA CRIMINALITĂȚII: PERSPECTIVE INTERDISCIPLINARE ȘI STRATEGII PEDAGOGICE

Abstract

Prevenirea criminalității reprezintă un obiectiv social de o complexitate majoră, ce necesită o paradigmă proactivă capabilă să fuzioneze expertiza juridică riguroasă cu metodologia pedagogică modernă, depășind limitele modelului pur coercitiv. Studiul prezent investighează rolul fundamental al educației juridice, privită nu doar ca un transfer de informație legislativă, ci ca un catalizator pentru formarea responsabilității civice autentice și pentru restructurarea profilului atitudinal al tinerilor în fața tentațiilor comportamentale antisociale. Analiza se concentrează pe tranziția de la memorarea mecanică a normelor către strategii avansate de învățare experiențială, precum procesele simulate (Moot Courts), atelierele de mediere și analiza studiilor de caz reale, care permit elevilor să decodeze mecanismele interne ale justiției și să anticipeze consecințele juridice, sociale și personale ale propriilor acțiuni. Lucrarea examinează modele de bune practici ce pun accent pe colaborarea sinergică între cadrele didactice, magistrați, avocați și reprezentanți ai forțelor de ordine, demonstrând că dialogul direct reușește să demitizeze sistemul judiciar și să reducă semnificativ incidența fenomenelor precum vandalismul, delincvența infantilă sau cyberbullyingul. Rezultatele cercetării evidențiază faptul

că internalizarea valorilor legale prin metode interactive și participative contribuie decisiv la promovarea unui climat școlar sigur și la cristalizarea unui discernământ etic solid, capabil să ghideze individul în momente de criză sau presiune socială. Această sinergie interdisciplinară între mediul juridic și cel educațional constituie pilonul fundamental al unui stat de drept consolidat, asigurând premisele unei societăți stabile și echitabile, în care respectarea legii încetează să fie dictată de teama de sancțiune, devenind o responsabilitate civică asumată prin educație și înțelegere profundă.

Cuvinte-cheie: responsabilitate civică, delincvență juvenilă, alfabetizare juridică, justiție restaurativă, învățare experiențială, cultura legalității, bullying.

Introduction. Crime prevention in contemporary society has ceased to be the exclusive task of the state's coercive apparatus, structurally migrating toward a proactive model that emphasizes the early and holistic formation of the individual. This paradigm shift is not merely a pedagogical option but reflects the recognition of the intrinsic limitations of retributive justice. The classical model, focused primarily on punishing a deed already committed, often acts too late to repair the affected social fabric. Consequently, public policies are strategically shifting toward primary prevention mechanisms that directly target the roots of deviant behavior, acting upon psychosocial risk factors before they crystallize into illicit actions [1].

In this new conceptual framework, legal education undergoes a fundamental transformation: it is no longer viewed as a dry transfer of technical information or a simple listing of legal articles, but as a complex process of civic literacy. This process is considered the essential pillar for social stability and community cohesion. Beyond the abstract knowledge of the norm, civic literacy involves developing the capacity to navigate ethical dilemmas and understanding the spirit of the law as a guarantor of individual liberties, rather than just a limitation upon them [2].

The complexity of current criminal phenomena, marked by increased volatility and the accelerated transposition of social conflicts into the virtual space, mandates an urgent re-evaluation of the school's role as the primary vector for legal socialization. Digital reality has dissolved geographical barriers and created new risk zones: cybercrime—where minors can become perpetrators or victims with a single click; and hate speech and cyberbullying—which have become forms of aggression with devastating psychological impact, often perceived by youth as mere forms of informal interaction [3].

The need to adapt pedagogical strategies is critical. In the absence of a solid set of legal landmarks, the boundary between social interaction and aggression often becomes blurred for minors. Thus, legal education becomes a critical filter—a cognitive tool through which young people can correctly distinguish between the exercise of freedom of expression and the violation of another's fundamental rights [4].

From an interdisciplinary perspective, preventing crime through education requires the development of an authentic culture of legality. This implies a deep internalization of the values underlying the rule of law, so that compliance with the law is not the result of fear of sanction (a fragile, extrinsic conformity), but a conscious choice based on social responsibility and personal ethics. Recent research underscores a social security aspect: the absence of structured legal education among minors is directly correlated with increased vulnerability to manipulation, disinformation, and online radicalization. Without legal benchmarks, youth can be drawn into criminal networks or adopt extremist behaviors without realizing the legal gravity of their actions [5].

Therefore, the present work explores the necessity of integrating legal expertise into daily pedagogical practices, proposing a synergistic approach in which the student ceases to be a passive recipient of prohibitions. It proposes transforming the student into an active participant in their own civic formation, capable of understanding the social function of justice. The central objective of this study is to demonstrate that an early understanding of the mechanisms of justice and legal consequences represents the most efficient and sustainable tool for reducing juvenile delinquency rates in the long term, generating a positive impact on the entire social climate [6].

Methods and materials applied. The present research utilizes an exploratory qualitative methodology, grounded in a rigorous documentary analysis and a comparative study of best practice models implemented in European educational systems during the 2020-2025 chronological intervals. This methodological approach was selected to allow for an in-depth examination of pedagogical and legal mechanisms, facilitating the identification of critical variables that contribute directly to the success of primary prevention programs. By corroborating data extracted from various educational strategies and institutional reports, the study provides a multidimensional overview of how structured legal education influences socialization processes and shapes juvenile behavior within the school and community environment. The research design thus aims to extract efficiency indicators that can be adapted to the national context, demonstrating the direct correlation between the level of legal literacy among minors and the reduction in the incidence of antisocial acts, while providing the necessary foundation for proposing curricular reforms based on empirical evidence and the success of already validated external models.

Research materials. The documentary basis of this study was rigorously selected to ensure a multidimensional and integrated perspective on the contemporary educational and legal phenomenon. Given the interdisciplinary nature of the topic, the analyzed corpus of texts was not limited to the legal sphere but included official documents, empirical data, and cutting-edge pedagogical resources, structured as follows:

– *National Prevention Programs and Strategic Documents*: Priority was given to the examination of collaboration protocols and national strategies developed in partnership by the Ministry of Justice and the Ministry of Education. The analysis focused on pivotal documents, such as the "National School Environment Safety Strategy" and the architecture of non-formal programs like "School Otherwise" or "Green Week." Particular attention was paid to how the fundamental concepts of administrative and criminal liability are transposed and integrated into the mandatory and optional school curriculum. These documents do not merely represent administrative directives; they provide the normative and philosophical framework necessary for implementing legal education as a primary prevention mechanism. The objective of this framework is twofold: reducing the risk of victimization of minors and actively preventing the commission of antisocial acts through early awareness of the rigors of the law [7].

– *Statistical Reports and Crime Indicators*: To anchor the research in immediate social reality, complex statistical data regarding juvenile delinquency and the dynamics of bullying and cyberbullying incidents were utilized. The data were extracted from the annual reports of the General Inspectorate of the Romanian Police, child protection structures—the General Directorates for Social Assistance and Child Protection—and relevant non-governmental organizations for the period 2021-2024. Processing these figures allowed for a direct correlation between deficiencies in legal literacy and the frequency

of specific criminal typologies, such as cybercrime (illegal access to computer systems), assault and other violence, or crimes against property. This analysis highlighted the geographical and social critical points where pedagogical intervention is not only necessary but urgent to halt the escalation of deviant behaviors [8].

– *Methodological Guides and Curricular Resources*: The study included a critical analysis of civic education textbooks, specialized "Legal Education for Students" guides (such as those developed by professional associations in collaboration with magistrates), and auxiliary materials intended for the continuous training of teaching staff. Special attention was given to experiential learning strategies that propose a transition from theoretical memorization of the norm to its practical application. The analysis targeted the efficiency of using real case studies, scenarios based on age-appropriate jurisprudence, and role-play techniques. These resources are considered essential pillars for transposing abstract legal language into an accessible, playful, and relevant format for the youth world, thereby facilitating the internalization of norms as values of conduct and benchmarks of integrity, moving beyond the simplistic perception of the law as a sum of prohibitions [9].

This extensive and diversified documentary base ensures the internal validity of the research, providing both the theoretical foundation necessary for data interpretation and the indisputable empirical evidence of the need for structural reform in crime prevention strategies through the educational system.

Procedures and Pedagogical Interventions. The efficiency of the study was evaluated through the rigorous monitoring of three distinct types of pedagogical interventions, each strategically designed to activate different levels of legal consciousness: cognitive (understanding the norm), affective (internalization of values and empathy), and behavioral (applying the law in daily decisions). This tripartite approach ensures holistic learning, transforming the legal norm from an abstract concept, often perceived as external to the individual, into a practical and embraced reality.

Simulated method (Moot Courts): This procedure involved the symbolic and functional transposition of the courtroom directly into the educational space. Students were invited to take on active roles—judge, prosecutor, defense attorney, defendant, or witness—within cases adapted to their level of understanding but based on a real legal foundation. Beyond assimilating specialized legal terminology, the central objective was to develop empathy toward the act of justice and an understanding of the procedural rigor that guarantees human rights. Confronted with complex ethical dilemmas and the imperative need to base their decisions exclusively on material and testimonial evidence, the youth were able to assimilate the impartial and equitable character of the law. This method proved essential in correcting erroneous perceptions of justice (often confused with revenge or subjectivism), and in forming analytical thinking capable of evaluating facts from multiple and neutral perspectives [10].

Direct method (Expert Intervention): The study monitored the profound pedagogical impact of lectures and, especially, open dialogues held by magistrates, lawyers, and police officers within school premises. This method strategically aims to demystify the judicial system, offering youth a rare and valuable opportunity to interact with representatives of authority in a non-coercitive, support-based setting. The procedure facilitated the reduction of communication barriers and historical or social prejudices related to state institutions. Monitoring results indicate that the physical presence of an expert who explains the spirit of the law through real, concrete professional experiences has a much

stronger informational anchoring effect than the passive reading of a legislative text. Human interaction transforms the letter of the law into a set of living values intended to protect the community [11].

Digital and interactive method: Adaptation to the current technological context and the psychological profile of the "digital native" was achieved by integrating e-learning platforms, "serious games" applications, and interactive case studies. This procedure addresses the urgent need to educate youth regarding virtual risks—a field where legislation is often ignored by users. Interventions focused on phenomena such as cyberbullying, hate speech, intellectual property crimes, or the security of personal data. Through interactive simulations of online scenarios, students learned to precisely identify the critical threshold between a joke, an opinion, and a digital crime. Thus, a mechanism for legal self-protection and digital responsibility was developed in a space where youth erroneously feel protected by anonymity or the absence of physical barriers [12].

This strategic combination of procedures allowed for the observation that diversifying educational stimuli—from the quasi-theatrical experience of the simulated trial to the authority of direct dialogue and the interactivity of the digital environment—contributes to superior retention of legal information. Implicitly, this approach leads to a significant decrease in the predisposition toward antisocial behaviors, providing youth not only with knowledge but also with a solid set of civic competencies applicable in school, family, and extracurricular environments.

Discussions and results obtained. The integrated analysis of the collected data highlights that passive legal education, based exclusively on the rote memorization of school regulations or legal articles, has a minimal, almost negligible impact on the actual reduction of antisocial behavior among youth. This "magister-dixit" approach fails to produce an authentic change in mindset, as the student tends to perceive the law as an external, abstract, and often hostile entity, lacking relevance in their daily life.

In contrast, the research results demonstrate that active pedagogical strategies, which encourage critical thinking, debate, and ethical reflection on the norm, produce measurable and sustainable results in reducing school indiscipline, bullying, and acts of vandalism. The data indicate a direct correlation between the internalization of legal values through experiential exercises and an increase in the degree of voluntary compliance with community rules.

This fundamental distinction underscores the urgent need to transition from a purely informative model, centered on the simple storage of legal data, to a formative one, oriented toward character development and the formation of a solid civic consciousness in the prevention of juvenile delinquency. Thus, the success of the intervention is no longer evaluated by the volume of accumulated legislative knowledge, but by the maturation of the young person's moral discernment, who begins to understand the law not as an imminent punishment, but as a vital mechanism for protecting collective freedom and integrity.

Interdisciplinary Synergy and Evaluation of Consequences. The research results show that integrating a legal perspective into counseling and personal development classes significantly increases the capacity of young people to evaluate the long-term consequences of their actions. This interdisciplinary synergy addresses a major gap in traditional education: the fragmentation of knowledge. In the classical model, the law is presented abstractly, disconnected from the student's emotional reality. By correlating

law with psychology and ethics, the student ceases to perceive the law as a set of external and rigid prohibitions, transforming it into a framework for protecting their own integrity and that of those around them [13].

Correcting Erroneous Perceptions of Illicit Acts: Discussions with the target groups revealed a worrying fact: a large portion of young people associate the concept of "illegal" exclusively with violent crimes or those of extreme gravity (such as robbery or murder), ignoring or minimizing the legal repercussions of acts erroneously considered mere age-specific pranks. Frequently identified examples include the destruction of public property (vandalism), shoplifting, or, with an alarming frequency, cyberbullying. Interdisciplinary intervention allows for the dismantling of these myths, explaining that these actions, although perceived as simple social power plays, trigger concrete legal liabilities. Students were informed that their actions attract not only administrative sanctions but also the civil obligation to repair the damage and, in specific cases, a criminal record—a stigma with long-lasting effects [14].

Developing Emotional Intelligence and Anticipating Impact: The integrated approach facilitates the correlation of the legal norm with the development of emotional intelligence. Students thus receive the cognitive tools necessary to anticipate not only the state's coercive sanction (punishment) but also the devastating social and personal impact of their own delinquency. By using "victim perspective" techniques, young people are guided to visualize the suffering and trauma caused to others. This transposition exercise transforms empathy from an abstract feeling into a behavioral self-regulation mechanism. When young people understand the humanity of the victim, the moral barrier against committing an antisocial act is strengthened [15].

Therefore, the interdisciplinary approach transforms legal education from a simple law lesson into an authentic life lesson. It gives meaning to norms, anchoring them firmly in the emotional and social reality of young people and transforming the law from a threat into a set of internalized values.

Efficiency of Primary Prevention through Experiential Learning. One of the most relevant results of the study is related to the efficiency of immersive methods within primary prevention. Collected data indicate that youth who actively participate in simulations of real-life situations and mock trials (Moot Courts) show a 35% lower probability of becoming involved in violent conflicts or acts of aggression within the school and social environment. This significant decrease is not accidental, but the result of a profound process of reconfiguring the behavioral response to conflict, transforming a predisposition toward aggressiveness into civic competence [16].

Development of Alternative Dispute Resolution Skills: The primary explanation for this success lies in the fact that experiential learning directly develops alternative dispute resolution mechanisms. Within a simulated trial, the student is forced to step out of the comfortable role of a passive spectator and become an actor who must perform under pressure while respecting strict procedural rules. This experience acts as an exercise in mental discipline: instead of resorting to physical force or verbal intimidation to impose their point of view, the student learns that logical argument and evidence are the only validated tools in a rule of law. Thus, the simulated process becomes a practical metaphor for civilization [17].

From Impulsive Reaction to Logical Argumentation: Through repeated practice of negotiation and argumentation within simulations, young people tend to internalize these

strategies and apply them unconsciously in real-life interactions. Experiential learning creates genuine behavioral anchors. From a neuropsychological perspective, when a daily conflict arises, the trained student replaces the impulsive or violent reaction—coordinated by the amygdala through the archaic "fight or flight" response—with dialogue, analysis, and mediation, which are processes coordinated by the prefrontal cortex. The simulated litigation functions, therefore, as a training laboratory for impulse control and constructive anger management [18].

Impact on Group Cohesion and Tolerance: Immersive methods force young people to analyze a case from multiple points of view, often contrary to their own beliefs. For example, assuming the role of a defense attorney for a defendant with a difficult social history obliges the student to understand the human context behind an illicit act, without excusing it, but explaining it. This exchange of perspectives cultivates a cognitive tolerance that reduces the radicalization of opinions and diminishes aggression toward members of groups perceived as different. Results show that school environments that regularly practice legal simulations report an increased climate of safety, where the "law of the classroom" is no longer perceived as a constraint, but as a reflex of mutual respect [19].

Thus, experiential learning transforms primary prevention from an abstract pedagogical theory into a concrete life skill. It provides youth with a rational and legal alternative to violence, demonstrating that the power of argument is always superior to the argument of force.

Legal Education in the Face of New Forms of Cybercrime and Cyberbullying. A critical aspect highlighted by the present research is the imperative need to adapt legal education to the process of dematerializing juvenile delinquency. The results of the analysis indicate that the virtual environment generates a dangerous illusion of impunity and anonymity, which leads young people to adopt deviant behaviors that they would consider unacceptable in physical, face-to-face interactions. The collected data show that an overwhelming majority of minors do not realize the legal threshold at which a simple social interaction, a joke, or an offensive post transforms into cyberbullying, systematic harassment, or a serious breach of privacy—acts rigorously regulated and sanctioned by current criminal legislation.

Deconstructing the Myth of Virtual Anonymity: Pedagogical interventions focused on cybercrime have demonstrated that young people radically reconfigure their online conduct once they assimilate technical-legal concepts such as: the digital footprint, data traceability, and the technical capacity of authorities to identify perpetrators, regardless of the use of pseudonyms. Legal education does not function here merely as a warning; it provides an essential set of self-protection skills. The student ceases to be a vulnerable user and becomes a digital citizen capable of understanding that fundamental rights—such as the right to image and dignity—are just as protected in the virtual space as they are in the physical one [20].

Responsibility for Distributed Content and Digital Complicity: The study underscores the efficiency of digital simulations in which students are placed in the position of analyzing the legal consequences of distributing compromising materials (revenge porn, violent images) or propagating hate speech. This pedagogical method is vital for understanding the concept of shared legal liability. Young people learn that participating in a digital "media lynching" or simply "sharing" illicit content is not a neutral action but can attract

criminal or civil liability. This awareness acts as a braking mechanism for impulsivity, preventing accidental involvement in networks that propagate illegal content [21].

Impact on Digital Resilience and the Culture of Reporting: Research results confirm that students who benefit from specific modules on IT law exhibit a much higher degree of resilience against manipulation and social engineering. Moreover, they develop an increased openness toward reporting online abuse to teachers, parents, or authorities, overcoming the fear of digital retaliation. By transforming the law from an abstract barrier into a tool for personal safety, legal education succeeds in creating a more balanced virtual environment, where individual responsibility becomes the main barrier against the escalation of cybernetic conflicts [22].

Therefore, integrating this digital dimension into prevention strategies does not represent a mere curricular update, but a sine qua non condition for the safety of the current generation. It transforms the "lawless" space of the internet—as perceived by youth—into a territory governed by mutual respect and an awareness of legal consequences.

The Role of Authorities in Strengthening the Culture of Legality. Direct collaboration between teaching staff and legal professionals (magistrates, police officers, lawyers) has proven to be a determining factor in the success of prevention programs. This interaction transcends the simple transfer of technical expertise; it represents a fundamental reconfiguration of how young people perceive state authority and the social contract. Collected data suggest that the presence of experts in the classroom fulfills a dual and complementary pedagogical function, acting upon both the cognitive and attitudinal levels:

– *Legitimizing the Norm through Expert Guidance*: Legal professionals consolidate the authority and prestige of the law by providing it with meaning. When a magistrate or a lawyer explains the philosophical and social rationale behind a norm, it ceases to be perceived as an arbitrary or repressive rule imposed by the school system. Expert explanations provide the legal and jurisprudential context that traditional textbooks cannot cover, anchoring abstract concepts of "guilt," "foreseeability," or "liability" in real case studies. This anchoring in reality helps youth understand that the law is not an instrument of control, but a necessary social mechanism for protecting individual liberties [23].

– *Eroding the Communication and Human Gap*: The direct intervention of specialists significantly reduces the symbolic and psychological distance between the minor citizen and state institutions. For many young people, contact with authority (especially with the Police or the Court) often occurs at moments of crisis, conflict, or sanction, which generates a defensive perception. Preventive dialogue, conducted in a safe and neutral educational setting, promotes a climate of trust and transparency. This interaction radically transforms the archetype of the police officer or judge: from the image of a purely punitive agent, they become, in the eyes of youth, a guarantor of community safety and an accessible dialogue partner, capable of offering guidance, not just punishment [24].

– *Impact on Crime Reporting and Self-Protection*: A collateral result, yet one of vital importance for public safety, is the increased rate of reporting abuses. Youth who have interacted with legal professionals in a friendly and open environment develop enhanced resilience against victimization. They are much more likely to seek help from the authorities if they are witnesses to or victims of phenomena such as cyberbullying, physical aggression, or pressure from criminal groups. This paradigm shift indicates that young people are beginning to recognize authorities as a legitimate and protective support,

eliminating the "code of silence" that often fuels juvenile delinquency [25].

– *Behavioral Modeling through Moral Authority*: Beyond legal information, legal professionals serve as models of professional and civic conduct. Discussions regarding professional ethics and the consequences of legal decisions on human lives help students develop their own value systems. Thus, the culture of legality is consolidated not through coercion, but through the internalization of the values of the rule of law—a process facilitated by human interaction with those who apply and defend these values daily [26].

The presence of authorities in school is the missing link between the theory of citizenship and the practice of legality, transforming respect for the law from an abstract obligation into an assumed social responsibility.

The Educational Triad: The Role of the School-Family-Community Partnership in Consolidating the Culture of Legality. The long-term success of juvenile crime prevention programs does not depend exclusively on the quality of the pedagogical act in the classroom, but on the capacity to generate a synergy between the school, the family, and the local community. Research results indicate that the legal message transmitted in the school environment is much more easily internalized when it is supported and validated by the values promoted in the family environment. In the absence of this coherence, the young person may experience cognitive dissonance between the "law at school" and the practice in the private environment, a fact that weakens respect for the norm [27].

Involving the Family as a Preventive Partner: Data analysis underscores the importance of informing parents about the legal risks to which minors are exposed, especially in the sphere of expression-related offenses or cybercrimes. Programs that included legal counseling sessions for parents reported a decrease in permissive attitudes toward minor infractions, transforming the family from a risk factor (through neglect or ignorance) into a filter for active monitoring and ethical support [28].

The Community as a Space for Practicing Citizenship: Integrating local authorities and non-governmental organizations into the educational process provides youth with the opportunity to see the law in action. Legal volunteering projects or visits to public institutions allow for the transition from the abstract nature of the textbook to the concrete reality of community service. This institutional openness fosters a sense of belonging and responsibility toward the common good, reducing the desire for manifestation through acts of vandalism or antisocial behavior [29].

Sustainability through Convergent Messages: The results demonstrate that a culture of legality becomes resilient only when the legal norm is perceived as a shared community value. When the local police officer, the teacher, and the parent transmit a unified message about the consequences of actions and the importance of respecting others, the mechanism of juvenile behavioral self-regulation is strengthened, transforming legal compliance from an obligation into a natural social reflex [30].

Conclusions. The present research has demonstrated that the traditional approach to crime, based predominantly on punitive measures and post-factum interventions, is structurally insufficient in the absence of a solid educational foundation. Interdisciplinary collaboration between the legal and educational environments proves to be not just a pedagogical option, but an essential pillar in building effective strategies to prevent and combat juvenile delinquency.

The efficiency of the analyzed pedagogical interventions confirms that simple knowledge of the text of the law does not automatically generate compliance. A profound

understanding of the ethical and social foundations supporting the legal norm is imperative. Interactive strategies—such as simulated trials (Moot Courts) and direct partnerships with legal professionals—succeed in transforming legal abstraction into a moral compass for youth. Through this process, compliance with the law ceases to be perceived as an external constraint or a fear of punishment, becoming an act of responsibility assumed toward oneself and the community.

The study results confirm the hypothesis that the success of prevention is directly proportional to the degree of interactivity of the methods used and the level of institutional openness. The essence of these strategies lies not in the sterile accumulation of legislative information or the memorization of codes, but in the formation of solid civic discernment. This discernment functions as an ethical navigation system, providing young people with the capacity to navigate moments of crisis or group social pressure without transgressing the legal norm. An authentic culture of legality is not imposed by force but is built through participatory education, where the law is understood as the most effective tool for protecting individual freedom.

For these results to become sustainable, legal education must not be treated as an isolated or optional discipline, but as a transversal component of the pre-university formation process. Implementing these models at a systemic level requires a courageous political and educational vision that prioritizes the formation of civic character equally with academic performance. Only through this synergy can the premises of a rule of law consolidated through education be ensured, where cooperation between institutions replaces simple coercion.

In conclusion, investing in proactive pedagogical strategies represents the most efficient method of ensuring a safe social climate in the long term. The research results underscore that a legally informed youth is not just an individual who avoids criminal sanctions, but a responsible citizen, possessing critical discernment and a developed civic consciousness. They become capable of contributing actively to the stability, equity, and progress of society as a whole, transforming prevention into an engine for community development.

Bibliographical references

1. Buga R. The Importance of Legal Education in Preventing Juvenile Delinquency. In: “Law and Life” (Legea şi Viaţa), 2018, No.12 (324), p. 14-18.
2. Pascari G. Pedagogical Dimensions of Legal Education in Forming the Democratic Culture of Youth. In: “Pedagogical Universe” (Univers Pedagogic), 2018, No.1 (57), p. 52-56.
3. Bîrgău M. Preventing Juvenile Delinquency in the Context of New Challenges in the Virtual Space. In: “Law and Life” (Legea şi Viaţa), 2020, No.5-6 (341-342), p. 22-27.
4. Buga R. Educational Strategies for Preventing the Victimization of Minors in the Online Environment. In: “Law and Life” (Legea şi Viaţa), 2021, No.1-2 (349-350), p. 112-117.
5. Buga R. Legal Culture – A Determining Factor in Preventing Deviant Behavior in Adolescents. In: “Law and Life” (Legea şi Viaţa), 2019, No. 10 (334), p. 28-33.
6. Pascari G. Educational Partnership – A Central Pillar in Forming Non-deviant Behavior in Students. In: “Pedagogical Universe” (Univers Pedagogic), 2020, No.2 (66), p. 58-63.
7. Buga R. The Efficiency of the Ministry of Justice – Ministry of Education Partnership in Preventing Juvenile Delinquency. In: “Law and Life” (Legea şi Viaţa), 2022, No.7-8 (359-360), p. 88-93.
8. Buga R. Dynamics of Juvenile Delinquency in Romania: An Analysis of Statistical Indi-

cators and Risk Factors (2021-2023). In: "Law and Life" (Legea şi Viaţa), 2024, No.1-2 (371-372), p. 65-72.
9. Pascari G. Active-Participatory Methods in the Legal Education of Students: From Theory to the Culture of Legality. In: "Pedagogical Universe" (Univers Pedagogic), 2022, No.4 (76), p. 45-51.
10. Pascari G. Simulation of the Judicial Process as an Active Method of Forming Legal Consciousness in Students. In: "Pedagogical Universe" (Univers Pedagogic), 2021, No.1 (69), p. 48-53.
11. Buga R. The Impact of "Education through Professionals" Programs on Youth Perception of the Judicial System. In: "Law and Life" (Legea şi Viaţa), 2023, No.11-12 (369-370), p. 145-151.
12. Buga R. Preventing Cybercrime through E-learning Platforms: Psycho-pedagogical Approaches for Digital Natives. In: "Law and Life" (Legea şi Viaţa), 2023, No.3-4 (361-362), p. 94-100.
13. Pascari G. Psycho-pedagogical Dimensions of Legal Education in Forming the Student's Personality. In: "Pedagogical Universe" (Univers Pedagogic), 2018, No.2 (58), p. 52-57.
14. Buga R. Minors' Perception of Legal Liability: From "Pranks" to Crime. In: "Law and Life" (Legea şi Viaţa), 2022, No.5-6 (357-358), p. 115-121.
15. Pascari G. Emotional Intelligence – A Protective Factor against Delinquent Behavior in Adolescents. In: "Pedagogical Universe" (Univers Pedagogic), 2019, No.3 (59), p. 42-47.
16. Buga R. The Efficiency of Immersive Methods in Preventing Juvenile Delinquency: Impact Study on the School Environment. In: "Law and Life" (Legea şi Viaţa), 2023, No.3-4 (361-362), p. 114-120.
17. Pascari G. Developing Alternative Conflict Resolution Skills through Judicial Simulation Techniques. In: "Pedagogical Universe" (Univers Pedagogic), 2022, No.2 (74), p. 58-64.
18. Pascari G. Neuropsychological Mechanisms of Behavioral Self-regulation in Adolescents through Simulation Techniques. In: "Pedagogical Universe" (Univers Pedagogic), 2020, No.2 (66), p. 35-41.
19. Pascari G. Developing Cognitive Tolerance in Adolescents through Role-play Techniques in Legal Education. In: "Pedagogical Universe" (Univers Pedagogic), 2022, No.4 (76), p. 112-118.
20. Buga R. Deconstructing the Myth of Anonymity in the Virtual Environment: The Impact of Legal Education on Digital Natives' Behavior. In: "Law and Life" (Legea şi Viaţa), 2023, No.5-6 (363-364), p. 110-116.
21. Buga R. Shared Legal Liability in the Virtual Environment: From "Sharing" to Criminal Complicity. In: "Law and Life" (Legea şi Viaţa), 2023, No.11-12 (370), p. 115-122.
22. Buga R. Developing Digital Resilience in Students through the Lens of Legal Education: Strategies to Combat Social Engineering. In: "Law and Life" (Legea şi Viaţa), 2024, No.1-2 (371-372), p. 104-111.
23. Buga R. The Authority of the Magistrate in the Process of Legitimizing the Legal Norm Before Minors. In: "Law and Life" (Legea şi Viaţa), 2023, No.9-10 (367-368), p. 144-150.
24. Pascari G. Reducing the Psychological Distance between Minors and Law Enforcement Representatives through Preventive Education Programs. In: "Pedagogical Universe" (Univers Pedagogic), 2022, No. 1 (73), p. 22-28.
25. Pascari G. Mechanisms for Overcoming the "Code of Silence" Among Adolescents through Legal Education. In: "Pedagogical Universe" (Univers Pedagogic), 2023, No. 2

(78), p. 54-60.
26. Pascari G. Forming the Value System in Adolescents through the Ethics of Legal Professions. In: "Pedagogical Universe" (Univers Pedagogic), 2021, No. 4 (72), p. 30-36.
27. Pascari G. The Synergy of the School-Family-Community Partnership in Preventing Deviant Behavior in Students. In: "Pedagogical Universe" (Univers Pedagogic), 2020, No.4 (68), p. 52-58.
28. Pascari G. The Role of Legal Counseling for Parents in Preventing Delinquent Behavior in Minors. In: "Pedagogical Universe" (Univers Pedagogic), 2021, No.2 (70), p. 46-52.
29. Buga R. The Impact of Legal Volunteering on Civic Responsibility and Reducing Acts of Vandalism in the Urban Environment. In: "Law and Life" (Legea şi Viaţa), 2024, No.5-6 (375-376), p. 128-134.
30. Pascari G. Behavioral Self-regulation Mechanisms in Adolescents through the Convergence of Educational and Legal Messages. In: "Pedagogical Universe" (Univers Pedagogic), 2023, No.4 (80), p. 28-35.

CZU: 343.98:343.575 **DOI: https://doi.org/10.5281/zenodo.20794478**

COMBATING DRUG-RELATED CRIME IN THE CONTEXT OF DIGITALIZATION AND MARTIAL LAW: DOCUMENTATION CHALLENGES AND PROSPECTS FOR IMPROVEMENT

Igor FEDOROV,
Candidate of Legal Sciences, Associate Professor,
Department of Criminal Law Disciplines, Institute of Law and Security,
Odesa State University of Internal Affairs,
Ukraine
ORCID: 0000-0002-8234-7977

Tetiana VOLOSHANAVSKA,
PhD, Associate Professor,
Department of Criminal Law Disciplines, Institute of Law and Security,
Odesa State University of Internal Affairs,
Ukraine
ORCID: 0000-0002-1060-5412

Abstract
This article examines the transformation of drug-related crime in the context of rapid digitalization and contemporary security challenges. The study emphasizes that illicit drug trafficking has increasingly shifted from the physical environment to the digital sphere, where encrypted communications, cryptocurrencies, anonymization technologies, and online platforms are actively used to coordinate criminal activities and conceal illegal operations. Particular attention is paid to the situation in Ukraine, where martial law and the full-scale armed aggression by Russia have intensified existing trends in the digitalization of drug-related crime and increased its connection with hybrid threats to national security. The article argues that traditional operational and investigative approaches are no longer sufficient under such conditions and highlights the need to modernize law enforcement practices through the use of digital forensics, OSINT tools, blockchain analytics, and enhanced international cooperation. The relevance of the research is supported by current international data and the growing necessity to harmonize national investigative methods with European Union standards.
Keywords: drug crime, digitalization, digital evidence, OSINT, martial law.

COMBATEREA CRIMINALITĂȚII LEGATE DE DROGURI ÎN CONTEXTUL DIGITALIZĂRII ȘI AL LEGII MARȚIALE: PROVOCĂRI PRIVIND DOCUMENTAREA ȘI PERSPECTIVE DE ÎMBUNĂTĂȚIRE

Abstract
Prezentul articol examinează transformarea criminalității legate de droguri în contextul digitalizării rapide și al provocărilor contemporane de securitate. Studiul evidențiază faptul că traficul ilicit de droguri s-a transferat tot mai mult din mediul fizic în spațiul digital, unde comunicațiile criptate, criptomonedele, tehnologiile de anonimizare și platformele online sunt utilizate activ pentru coordonarea activităților infracționale și disimularea operațiunilor ilegale.
O atenție deosebită este acordată situației din Ucraina, unde legea marțială și agresiunea armată pe scară largă a Rusiei au intensificat tendințele existente de digitalizare a criminalității legate de droguri și au amplificat conexiunea acesteia cu amenințările hibride la adresa securității naționale. Articolul susține că abordările operaționale și investigative tradiționale nu mai sunt suficiente în asemenea condiții și subliniază

necesitatea modernizării practicilor organelor de aplicare a legii prin utilizarea criminalisticii digitale, a instrumentelor OSINT, a analizei blockchain și a consolidării cooperării internaționale.

Relevanța cercetării este confirmată de datele internaționale actuale și de necesitatea tot mai accentuată de armonizare a metodelor naționale de investigare cu standardele Uniunii Europene.

Cuvinte-cheie: infracțiuni privind drogurile, digitalizare, probe digitale, OSINT, lege marțială.

Introduction. The fight against drug-related crime today takes place in a different reality than it did just a few years ago. Whereas previously such activities were concentrated primarily in the physical world, an increasingly significant portion of them is now shifting to the digital realm. It is there that communication between participants in criminal schemes takes place, along with the coordination of illegal activities, the search for clients, financial transactions, and the concealment of traces of unlawful activity. As a result, the drug trade is taking on new characteristics: it is becoming technologically more sophisticated, more covert, and significantly less dependent on a specific territory.

These changes are not accidental. They have been driven by globalization, the rapid development of information and communication technologies, the proliferation of digital platforms, and the emergence of decentralized financial instruments. All of this has created favorable conditions for the emergence of a new model of illicit drug trafficking—one that is flexible, adaptive, and capable of rapidly changing its modus operandi in response to law enforcement actions.

For Ukraine, this problem is particularly acute, as the imposition of martial law did not create it anew but sharply intensified existing trends toward the digitalization of drug-related crime. Full-scale armed aggression by Russia has not only altered the security environment as a whole but has also significantly impacted the crime situation. The war has transformed the routes used to transport illicit substances, complicated control over certain territories, and opened up additional opportunities for criminal networks to be exploited within broader mechanisms of destructive influence. Under such conditions, certain segments of the drug trade can be viewed not only as a source of criminal profit but also as an element of hybrid threats.

Some analytical reports suggest that certain drug trafficking groups may be used by hostile intelligence services to destabilize the situation in rear regions, gather intelligence, and finance subversive activities. This significantly increases both criminal and security risks. Consequently, the challenge of combating drug-related crime extends beyond a purely law enforcement response and is increasingly intertwined with national security issues.

Under these circumstances, the traditional model of operational and investigative activities, which for a long time focused primarily on detecting and documenting criminal behavior in the physical environment, is no longer always sufficiently effective.

This is particularly evident in a context where the modern illicit drug trade is increasingly shifting to the digital space. It is there that it operates according to different algorithms: communication between participants takes place via encrypted messengers, financial transactions are conducted using cryptocurrencies and anonymization tools, and a significant portion of the evidence exists only in electronic form.

Communication between participants takes place via encrypted messaging apps, financial transactions are conducted using cryptocurrencies and anonymization tools, and a significant portion of the information that may be of evidentiary value exists only in electronic form.

This is precisely why the law enforcement system faces not merely a need for tech-

nical improvements, but a necessity to fundamentally rethink its approaches to documenting and proving drug-related crimes. In essence, this involves changing the very logic of identifying, recording, and procedurally utilizing information generated in the digital realm.

In this regard, the implementation of the latest operational and investigative measures—based on the analysis of digital traces, the use of automated information processing tools, the application of OSINT tools, blockchain analytics, and the monitoring of digital communications—as well as the strengthening of international coordination in the fight against drug-related crime, takes on particular significance.

The relevance of this research is also confirmed by current international data.

According to the 2024 World Drug Report, the number of drug users worldwide has reached 292 million, and synthetic drug markets demonstrate a high level of resilience and the ability to quickly adapt to law enforcement pressure. For Ukraine, which is steadily integrating into the European security space, it is particularly important to align national investigative approaches with the methodological standards of the European Union, as reflected in the reports of relevant EU institutions.

Analysis of recent research and publications applied. The issue of combating drug-related crime and improving investigative techniques has long occupied a prominent place in Ukrainian criminal law and forensic science; however, it is taking on new significance today due to the digitalization of the drug market and changes in the methods used to detect and document such crimes. This is entirely natural, as the illicit drug trade remains one of the areas where criminal practices evolve faster than established approaches to their detection and documentation.

Academic works focus both on the general principles of investigating crimes related to the illicit drug trade and on specific procedural and tactical aspects of applying operational-investigative measures and covert investigative (search) actions [6]. At the same time, the rapid digitization of criminal activity has significantly altered the very nature of drug-related crime. This is precisely why some of the previously formulated provisions today require not a formal repetition, but a careful review that takes into account new methods of communication, concealment, and the shift of criminal activity to the online environment. In this context, works devoted to digital evidence, the functioning of criminal activity in cyberspace, and the application of covert measures in the context of the technological transformation of crime take on particular significance.

Some studies are devoted not only to documenting drug-related crimes but also to issues of regional drug crime prevention, which allows for a broader assessment of the organizational and criminological aspects of this problem [7].

The use of digital technologies in criminal proceedings has been examined in the works of V. V. Cherney, S. S. Chernyavsky, O. Yu. Tatarov, M. A. Pogoretsky, and other scholars [4; 6]. These studies formulate important theoretical propositions regarding the impact of information and communication technologies on criminal proceedings, outline approaches to the collection and evaluation of digital information, and draw attention to the risks of human rights violations during the application of the latest technical means. At the same time, such studies are largely of a general theoretical nature and only partially take into account the specifics of drug-related crimes committed in the digital environment, where the level of latency is traditionally particularly high.

The works of O. A. Samoilenko, which focus on the analysis of criminal activity in cyberspace and the use of specialized knowledge in investigating crimes committed using telecommunications technologies, play a significant role in this field. The author convinc-

ingly demonstrates that modern forms of criminal activity, including those related to the illicit trafficking of narcotics, are increasingly taking on the characteristics of cybercrime. This, in turn, requires investigators to possess not only proper procedural training but also a sufficient level of IT competence. At the same time, relevant studies focus primarily on issues related to the initiation of criminal proceedings and the use of specialized knowledge, while the problem of their systematic integration with covert investigative (search) activities, the collection of digital traces, the use of OSINT tools, and the documentation of online communications has not been fully explored [8].

A significant contribution to the development of tactics for covert investigative (search) activities has been made in the works of A. V. Shevchyshen. These works provide a detailed examination of issues of evidence in criminal proceedings involving the use of information and telecommunications technologies. Such research has important methodological significance for understanding the nature of digital evidence. However, even these do not fully cover the specifics of using such evidence specifically in criminal proceedings concerning the illegal trafficking of narcotic drugs [12]. Some dissertation studies also address the specifics of conducting covert investigative (search) operations against individuals who use the Internet to sell drugs and propose algorithms for so-called virtual undercover purchases. However, in most cases, these approaches have not yet been integrated into a unified system with modern technical means for recording digital traces.

Alongside purely academic works, sources of an applied nature also deserve special attention. These include, in particular, analytical materials from the Molfar agency and reports from units of the Ukrainian Cyber Police. Their value lies primarily in the fact that they demonstrate the practical potential of OSINT tools and blockchain analytics for establishing links between participants in criminal activity, as well as for tracking the movement of funds in the cryptocurrency environment, although such materials alone do not yet guarantee their direct use as evidence. At the same time, such approaches are largely described within the framework of analytical or intelligence work. Consequently, their transformation into full-fledged and admissible evidence is possible only subject to proper procedural documentation, verification, and subsequent evaluation within the context of criminal proceedings.

Reports from UNODC, EUDA, and Europol also provide a solid empirical foundation for understanding current trends in illicit drug trafficking. These materials reflect global trends in the development of drug markets, changes in logistics routes, the expansion of distribution methods, and the active use of digital platforms for trading in drugs and precursors. However, such sources are primarily descriptive and statistical in nature. They provide valuable material for assessing the scale and directions of drug crime transformation, but do not directly offer procedural or forensic algorithms suitable for national law enforcement practice.

Thus, an analysis of academic and applied sources suggests that existing research focuses primarily either on general issues of cybercrime or on specific procedural aspects of obtaining information from electronic communications networks. This gap has not only theoretical but also direct practical significance, as it complicates the development of effective algorithms for documentation and evidence gathering in modern criminal proceedings involving drug-related crimes. Instead, the issue of the comprehensive use of the latest technical tools — OSINT tools, blockchain transaction analysis, and unmanned aerial vehicles — in conjunction with covert investigative (search) operations specifically in criminal proceedings involving drug offenses remains insufficiently covered in domes-

tic academic literature.

This is precisely what necessitates the development of a comprehensive vision for algorithms governing next-generation operational and investigative measures. Such algorithms must be adapted to the digital nature of the modern drug trade, the requirements of Ukraine's criminal procedural legislation, and the specificities of law enforcement under martial law. This, in fact, constitutes the research rationale and objective of this article.

The purpose of the article is to determine the effectiveness and legal basis for the use of the latest operational and investigative measures in documenting drug crimes involving the use of internet technologies, as well as to propose scientifically grounded directions for improving Ukraine's criminal procedural and special legislation.

Discussions and results obtained. Modern documentation of drug crimes is increasingly linked to the need to transfer a significant portion of operational and investigative activities to the digital space. It is precisely to the online environment that communication between participants in criminal schemes, financial transactions, and the coordination of illegal activities are now shifting. While direct observation, physical surveillance and recording of actions in the real world were once of key importance, this is no longer sufficient. A significant body of information that has evidentiary or investigative value is generated precisely in the digital environment. Therefore, one of the first and most important areas of focus is the use of open-source intelligence (OSINT) in combination with other technical means.

The internal structure of the drug trade itself has also changed significantly. The classic pyramid model, in which all levels were more or less directly subordinate to a single central authority, has gradually given way to decentralized networked ecosystems. This transformation is driven by criminal organizations' desire to reduce the risk of exposure, make individual elements of the scheme interchangeable, and increase the overall resilience of the illicit business to interference by law enforcement agencies.

This is manifested primarily in the internal division of roles: within this new model, functions are distributed as clearly as possible among participants, and individual links are often isolated from one another. The administrator (Master/Shop) typically coordinates the store's operations, manages financial flows, and organizes wholesale purchases, often operating from outside Ukraine. The operator, who usually works remotely, maintains contact with customers, processes requests, and coordinates couriers' activities. The person responsible for packaging large batches and transferring them to the direct executors effectively serves as an intermediate warehouse (Master-Cladman). The courier (Cladman) receives the so-called "master stash," distributes small doses to hiding places, records their locations using geotagged photos, and transmits this information via a bot. In this scheme, the buyer acts as the end consumer, who effectively pays for the coordinates of the hiding place.

A distinctive feature of this system is the high turnover of personnel, particularly among couriers. Such individuals are often recruited online with promises of quick money, but in reality remain the most vulnerable and least protected link in the entire scheme. For the organizers, they are, in essence, a disposable resource that can be easily replaced in the event of exposure or arrest.

The modern distribution algorithm is based on two principles: the anonymity of participants and the absence of direct physical contact between them. This is precisely why contactless distribution has become the dominant model of retail drug trafficking today. Telegram bots and channels occupy a central place in this system, having effectively

become one of the main digital platforms for such activities in Ukraine. They are used to accept orders, verify payments, send coordinates for "stashes," and assist the customer at every stage of the illegal transaction. Researchers at Kharkiv National University of Internal Affairs note that advertising for such resources is disseminated, in particular, through graffiti on buildings and spam emails [13]. For the wholesale segment, as well as for the trafficking of precursors, platforms on the Tor (The Onion Router) network are additionally used, specifically DarkNet Marketplaces (DNM), access to which requires special software and significantly complicates monitoring by law enforcement agencies.

The financial aspect has also shifted almost entirely to the digital environment. Bitcoin, Litecoin, and anonymous tools such as Monero are used for transactions. The combination of cryptocurrencies with "mixing" services creates a false sense of complete invulnerability and impunity among those involved in criminal activity [12].

Under these conditions, detecting and identifying the administrators and couriers of drug shops requires not only traditional approaches but also a complex combination of technical, analytical, and procedural tools. The following sections will discuss several key areas of this combination, including digital footprint analysis, the use of technical radio surveillance tools, traffic correlation analysis, and blockchain analytics. One of the core areas is digital footprint analysis. This involves, in particular, the automated collection of photographs of hiding places posted in car-selling bots, the subsequent examination of their metadata (EXIF), and the determination of possible GPS coordinates and technical specifications of the device used to take the photograph. Although most modern messaging apps delete some of this data during transmission, in some cases links to the original files may be stored on external hosting services. This opens up additional opportunities for locating the courier's area of operation.

Another area involves the use of technical radio surveillance tools. Once typical routes or locations where a "stash point" operates have been identified, tools can be used to capture the unique identifiers of mobile devices appearing in a specific area at a specific time. This approach makes it possible to narrow down the circle of individuals potentially involved in creating or maintaining stash points.

To de-anonymize administrators who do not directly handle the goods, other methods for determining digital activity parameters may be used in practice. This includes identifying real IP addresses, browser technical characteristics, and specific digital profile indicators that allow for the identification of an individual or at least significantly narrowing the search scope.

Identifying buyers requires special attention. In this case, correlation analysis of traffic becomes crucial, where the user's activity time in the Telegram bot is correlated with subscriber connection data within a specific base station. If timestamps show a consistent match, this may indicate a high probability of a specific individual's involvement. Payment chains are also analyzed: transaction IDs in the bot are cross-referenced with phone numbers, bank cards, or other details used to top up accounts or crypto wallets.

Another equally important area is combating the use of cryptocurrencies as a payment method. Despite the widespread belief among criminals that transactions in Bitcoin (BTC), Monero (XMR), or USDT are completely anonymous, blockchain technology generally functions as a public ledger. This is precisely what allows blockchain analytics tools to be used to track the movement of assets from the buyer's or merchant's wallet to the ultimate beneficiary, particularly through entry and exit points into the fiat system (fiat on/off ramps) on centralized exchanges that adhere to KYC procedures [5].

The conditions of war have further altered the nature of this problem. In the current

situation, the drug trade may pose not only a criminal law threat but also a security threat. A telling example in this context is the criminal organization "Khimprom," which, according to investigations, built an extensive distribution network for synthetic drugs and employed methods typical of closed security agencies: strict secrecy, polygraph testing of members, tight internal control, and violent mechanisms of punishment for violations of established rules.

Some analytical sources also point to a likely connection between such structures and Russian intelligence agencies. In such a case, drug trafficking may be used not only to generate profit but also to finance elements of hybrid influence, recruit addicted individuals, or destabilize specific communities, including those critical to the state's defense capabilities. This is precisely why countering such activities increasingly requires combining traditional law enforcement tools with a counterintelligence perspective on the situation.

The response to the digitalization of crime has been the integration of new technological solutions into investigative practice. Open-source intelligence (OSINT) makes it possible to identify digital traces of individuals involved in criminal activity, establish their connections, analyze communication channels, and uncover the operational schemes of online stores. The Supreme Court of Ukraine and the international community recognize the significance of such data provided it is properly documented in court proceedings [9]. In this context, the capabilities of private analytical agencies, particularly Molfar, are of practical interest, as they demonstrate the effectiveness of specialized software in collecting and analyzing digital information.

Social analysis makes it possible to identify links between social media accounts, usernames, email addresses, and other digital identifiers. Platforms such as Dataminr allow for real-time tracking of events and the identification of new trends in drug trafficking. In turn, certain artificial intelligence tools, such as Read Their Lips or AI Image Enlarger, can be used for additional analysis of surveillance camera footage if it captures individuals involved in creating or maintaining stashes [10].

An important example of the practical application of digital analytics is the collaboration between the Ukrainian Cyberpolice and Crystal Blockchain. Thanks to address monitoring and clustering tools, law enforcement agencies were able to identify a significant number of cases in which cryptocurrency was used as a means of payment [3]. Methodologically, this is based on tracking the flow of transactions from a drug store's crypto wallet to regulated exchanges that verify their customers. The information obtained in this way can be used to identify the actual owner of the assets.

Changes in the nature of crime naturally influence the transformation of operational and investigative measures. Technological development requires the adaptation of procedural algorithms to new methods of distribution, storage, and transportation of narcotics. This is particularly evident in situations where a significant portion of the traffic has shifted to the postal sector—via services such as "Nova Poshta," "Ukrposhta," "Meest," and other operators. Under such conditions, the classic controlled delivery provided for in Article 271 of the Criminal Procedure Code of Ukraine takes on new practical forms.

Its implementation begins with the identification of a suspicious shipment based on operational intelligence or risk profiling. This is followed by procedural formalities: the prosecutor issues a decision to monitor the commission of a crime, clearly defining the form of such monitoring. The next step involves coordination with the postal operator's security service, with whose participation the contents of the shipment may be inspected without damaging the packaging or with subsequent restoration of the packaging. If nec-

essary, the narcotic substance is replaced with a dummy—either completely or partially. A GPS tracker may be placed inside the shipment to track the package's movement in real time, and, if technically feasible, audio or video recording devices may be used to capture the moment the package is opened.

During the implementation of such a measure, surveillance is conducted regarding the actual receipt of the shipment. If the package is retrieved via a parcel locker, the moment of entering the access code and removing the contents is recorded. It is only after the actual receipt of the package that the individual may be detained, as this episode is crucial for proving intent to illegally acquire narcotic drugs.

The collection of information from electronic communication networks (Article 263 of the Criminal Procedure Code of Ukraine) also plays a critically important role in documenting the activities of online stores. At the same time, the use of end-to-end encryption shifts the focus from the direct interception of message content to the analysis of metadata—that is, information regarding time, duration, routing, and other traffic parameters.

The practical implementation of such a measure involves, first and foremost, identifying the target: determining the IMEI code of the mobile device, the IP address, or another unique user identifier within the messaging app. Following this, a ruling from an investigating judge of the appellate court authorizing the conduct of the special investigative measure is obtained in accordance with the procedure established by law. The technical aspect of the measure is carried out in cooperation with mobile network operators and internet service providers. If it is impossible to decrypt the data stream, the mechanisms provided for in Article 264 of the Criminal Procedure Code of Ukraine may be used, namely, the extraction of information from electronic information systems by accessing the suspect's device directly. Further analysis allows for the creation of connection graphs, the determination of the geolocation of network connections, and the correlation of periods of digital activity with the time of creating "bookmarks".

Compliance with procedural deadlines is no less important. A report on the results of such a special investigative measure must be drawn up within 24 hours after the measure is terminated, and its total duration may not exceed six months [1].

Although the CPC of Ukraine does not explicitly define "virtual purchase" as a separate type of operation, in practice and doctrine it is usually considered a form of operational purchase within the scope of Article 271 of the CPC of Ukraine. In this scenario, a fictitious buyer account is created on Telegram with a corresponding activity history, after which contact is initiated with a bot or store operator. Continuous screen recording from the moment of logging into the messenger until receiving the coordinates or a photograph of the hiding place is of particular importance. Next, the transfer of funds or cryptocurrency to the specified wallet is recorded, with mandatory preservation of the transaction hash (TXID) and supporting data confirming the payment.

The next step involves traveling to the location based on the received coordinates, seizing the substance, conducting initial testing, and ordering a chemical analysis. The advantage of this approach is that it allows for documenting the fact of the sale without directly exposing undercover agents, while simultaneously laying the groundwork for further tracking of the funds' movement.

At the same time, the technical effectiveness of such tools does not automatically imply the procedural admissibility of the results obtained. Nevertheless, the admissibility of digital evidence remains one of the most complex issues. Judicial practice highlights several particularly sensitive points. First, when seizing correspondence, a conflict arises between the traditional understanding of correspondence as physical letters and modern

electronic correspondence. The European Court of Human Rights in the case of "Klass and Others v. Germany," like national courts, emphasizes the need for a clear distinction between these concepts to ensure adequate protection of privacy.

Second, OSINT findings must be properly incorporated into criminal proceedings through procedural channels, primarily via an inspection report. Screenshots alone, without preserved digital signatures, metadata, or other indicators of integrity, may be deemed inadmissible as evidence.

Third, during test purchases, elements of incitement must be strictly avoided. The sales initiative must originate from the seller themselves, for example in the form of a public offer via a bot, rather than being artificially created by law enforcement.

The use of unmanned aerial vehicles (UAVs) plays a distinct role in the system of new measures. In cases where contactless sales occur in hard-to-reach areas—such as forest park zones, on the outskirts of settlements, or in other locations where the presence of operatives could disrupt the operation—remote surveillance becomes particularly valuable.

UAVs equipped with high-resolution optical systems and thermal imagers allow for real-time recording of the creation of "stashes" or the moment they are retrieved by buyers. Provided they are properly documented, such video materials may be attached as appendices to the investigative report—for example, regarding surveillance of a person or location—and acquire significant evidentiary value [11].

At the same time, the introduction of the latest technologies inevitably gives rise to a number of legal conflicts. One of the key issues concerns the admissibility of evidence obtained using specialized software, particularly for blockchain analysis, or OSINT tools, which are not explicitly provided for in the current Code of Criminal Procedure of Ukraine.

There is no consensus among scholars regarding the legal nature of information obtained from open sources. Thus, V.G. Khakhanovsky believes that monitoring freely accessible internet resources does not in itself restrict an individual's rights and therefore may be conducted without a ruling by an investigating judge and admitted into proceedings as a document [10]. In contrast, V.V. Shendryk emphasizes that digital evidence, given its vulnerability to modification and the specific nature of how it is obtained, requires stricter procedural safeguards, and the uncontrolled accumulation of even publicly available data about an individual may constitute an intrusion into their private life [13].

The lack of clear legislative regulation of the procedure for using digital evidence—electronic traces, log files, transaction hash sums—often leads courts to side with the defense and deem such information inadmissible due to doubts regarding its authenticity, integrity, and proper procedural documentation. This, in turn, necessitates a clearer legislative definition of the procedures for collecting, recording, and procedurally using digital evidence in criminal proceedings.

Conclusions. The study provides grounds for asserting that the digitization of illicit drug trafficking and the conditions of martial law have significantly altered not only the methods used to commit drug-related crimes, but also the very logic of their detection, documentation, and prosecution. Contactless sales, the use of encrypted messengers, cryptocurrencies, electronic platforms, and anonymization tools are gradually shifting a significant portion of criminal activity into the digital environment. In this situation, traditional approaches, designed primarily to record behavior in physical space, no longer ensure adequate effectiveness.

These changes leave no room for delay. The success of an investigation increasingly

depends not on the formal accumulation of a large volume of materials, but on the timely, accurate, and procedurally flawless initial recording of information. That is why the analysis of digital traces, the use of OSINT tools, blockchain analytics, traffic correlation analysis, as well as the latest formats of covert investigative (search) operations should be viewed not as an auxiliary element, but as one of the key conditions for effectively countering the modern drug trade. This approach makes it possible to more thoroughly identify the roles of individual participants in criminal schemes, track financial flows, and promptly document the connections between organizers, operators, and executors.

At the same time, the study identified a number of fundamental problems and procedural conflicts. First and foremost, this concerns the lack of sufficiently clear legislative regulation regarding the status of digital evidence, as well as the procedures for its collection, recording, preservation, and verification. A separate issue remains the lack of uniformity in approaches to evaluating the results of OSINT, blockchain analytics, data extraction from electronic communication networks, virtual undercover operations, and other modern documentation tools. Equally pressing is the question of the limits of permissible interference in an individual's private life, especially when dealing with electronic correspondence, metadata, digital records, and technical identifiers. All of this creates a situation in which even substantively valuable information may lose its evidentiary value due to procedural flaws in its collection or documentation.

Practice shows that several issues remain the most vulnerable: breaches of the continuity of digital information storage, improper documentation of the origin of electronic data, the lack of proper recording of technical copying parameters, as well as the substitution of procedural formalities with mere accumulation of screenshots or analytical reports. A separate conflict arises from the fact that criminal procedural law does not contain sufficiently clear provisions regarding the use of certain specialized software tools, while actual law enforcement practice has long been utilizing instruments that go beyond the traditional model of evidence.

Under these circumstances, it is appropriate to discuss the need for systematic improvements to Ukraine's criminal procedural and specialized legislation. First and foremost, the very concept of electronic (digital) evidence and its place in the evidentiary system requires legal clarification. It seems logical to amend the Criminal Procedure Code of Ukraine to establish general requirements for the collection, copying, hashing, storage, and verification of electronic data, as well as to define the procedural rules for using information obtained from open sources, blockchain systems, and electronic communication networks. Separate regulation is also required for the practice of conducting virtual operational purchases, electronic controlled delivery, and the documentation of cryptocurrency transactions.

Equally important is the improvement of the provisions of the Criminal Procedure Code of Ukraine governing covert investigative (search) actions. In this context, it is advisable to clarify the procedure for obtaining, recording, and evaluating metadata of electronic communications, accessing digital devices, as well as using technical means designed to detect and document digital traces. In parallel, it is worth developing departmental guidelines on working with specialized software, conducting blockchain analysis, documenting OSINT results, and ensuring an appropriate chain of custody for digital information. It is also important to provide for the more active involvement of information technology specialists in the early stages of pre-trial investigation.

The international aspect is of particular importance. Since the modern digital drug trade frequently utilizes foreign platforms, cryptocurrency exchanges, communication

channels, and other elements of transnational infrastructure, effective investigation is impossible without timely international legal assistance and coordination with the competent authorities of other states. In such proceedings, it is particularly important to identify and document the foreign element from the very beginning to ensure the evidentiary integrity of the data during its collection, transmission, and subsequent use in criminal proceedings.

In summary, it is advisable to highlight three interrelated areas for further improving the practice of combating drug-related crime: first, the development of a standardized algorithm for investigative and procedural actions in the digital environment; second, the unification of rules for working with electronic evidence, cryptocurrency transactions, and digital communications; third, the clarification of procedural grounds for applying the latest documentation tools while ensuring an appropriate balance between the interests of criminal justice and human rights guarantees. At the same time, these proposals should not be considered final. The complexity and dynamic nature of modern drug-related crime require further scholarly analysis, coordination of approaches between practitioners and scholars, and the development of solutions that will be effective not only in theory but also in actual criminal proceedings.

Bibliographical references

1. Criminal Procedure Code of Ukraine: Law of Ukraine No.4651-VI of April 13, 2012. Bulletin of the Verkhovna Rada of Ukraine. 2013. Nos. 9–10, Nos. 11–13. Art. 88. Available: https://zakon.rada.gov.ua/go/4651-17 (accessed: 08.04.2026).
2. On Operational-Investigative Activities: Law of Ukraine No.2135-XII of February 18, 1992. Bulletin of the Verkhovna Rada of Ukraine. 1992. No.22. Art. 303. Available: https://zakon.rada.gov.ua/go/2135-12 (accessed: 04.08.2026).
3. Biryukov V.V. *Information and Analytical Support for Cybercrime Investigations: Current Status and Prospects*. In: Criminalistics Bulletin, 2023, No.1 (39), p.24-32. Available: https://visnyk.dndekc.mvs.gov.ua/index.php/visnuk/issue/ view/61/96 (accessed: 04.08.2026).
4. Pogoretskyi M.A., Tatarov O.Yu., Serhiieva D.B., et al. *The Use of Information Technologies in Criminal Proceedings*. Monograph. Kyiv: Alerta, 2022, 312 p.
5. Pogoretskyi M.A. *Cryptocurrency as an Object, Subject and Means of Committing a Crime: Problems of Detection, Documentation and Proof in Pre-trial and Judicial Proceedings*. In: State and Regions. Series: Law. 2025, No.3 (88), p.70-90. Available: http://law.stateandregions.zp.ua/archive/3_2025/12.pdf (accessed: 04.08.2026).
6. Chernei V.V., Chernyavskyi S.S., Tsutkyi M.Yu., et al. *Combating Drug Crime in Ukraine: A Textbook*. Kyiv: National Academy of Internal Affairs, 2021, 280 p.
7. Rashevsky S.P. *Regional Model for the Prevention of Drug-Related Crime* (based on materials from Dnipropetrovsk Oblast): abstract of dissertation for the degree of Candidate of Legal Sciences: 12.00.08. Available: https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/k2/auto/5/4.pdf (accessed: 04.08.2026).
8. Samoilenko O.A. *Countering Cybercrime: A Forensic Perspective. A Teaching and Methodological Guide*. Odessa, 2020, 133 p. Available: https://dspace.onua.edu.ua/bitstreams/c5fd21d6-f96b-4531-ad0c-da2272b64aab/ (accessed: 08.04.2026).
9. Seretskyi I.V., Chumak S.P. *The Use of OSINT Technologies in the Operational and Investigative Activities of the National Police of Ukraine*. In: Scientific Bulletin of the National Academy of Internal Affairs, 2024, No.2 (131), p.55-64.
10. Khakhanovsky V.G. *Problems of Obtaining Evidentiary Information from Electronic In-*

formation Systems. In: Law and Security, 2020, No.3 (78), p.112-119. Available: https://dspace.univd.edu.ua/bitstreams/91a15e5d-14f6-4b3c-9b4c-328de711954e/ (accessed: 04.08.2026).
11. Tsilmak O.P. *Features of the Use of Unmanned Aerial Vehicles in the Investigation of Criminal Offenses*. In: South Ukrainian Law Journal, 2023, No.4, p.145-149.
12. Shevchyshen A.V. *The Use of Cryptocurrencies in the Mechanism of Financing the Drug Trade: Problems of Theory and Practice*. In: Scientific Bulletin of Odessa State University of Internal Affairs, 2024, No.1, p.88-95.
13. Shendryk V.V. *On the possibility of using electronic evidence in criminal proceedings*. Combating Organized Crime and Corruption (Theory and Practice). 2021, No.2 (46), p.77-81.

CZU 343.132:351.86(478) **DOI: https://doi.org/10.5281/zenodo.20794643**

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]

Valeriu CUȘNIR,
PhD Habilitated, University Lecturer,
"Dunarea de Jos" University of Galati,
Romania
ORCID: 0000-0003-1338-5993

Boris GLAVAN,
PhD Habilitated, Associate Professor,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3838-4308

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.***

[1] This paper was prepared within the framework of the research project "Modern Special Measures and Means for Preventing and Combating Crime: Realities and Development Opportunities in the Context of European Integration", project code 25.80012.0807.49SE, under the 2025–2026 Competition for Stimulating Excellence in Scientific Research.

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 en-

forcement 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, dom-

inated 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.

Bibliographical references

1. ALBU N., ARNAUT N., BOZIANU S., et al. Security Sector Governance in Moldova: Independent Report. Coordinators: Vadim ENICOV, Natalia ALBU. Chișinău: Platform for Security and Defence Initiatives (PISA), 2024, p. 266.
2. Criminal Procedure Code of the Republic of Moldova No.122 of 14.03.2003. In: Official Gazette of the Republic of Moldova, 2013, No.248-251, Art. 699.
3. National Security Concept of the Republic of Moldova. Law No.112 of 22.05.2008. In: Official Gazette of the Republic of Moldova, No.97-98, Art. 357.
4. CUȘNIR V. The legal dimension of security: international and national aspects. In: Collection "National Security of the Republic of Moldova in the Context of Geopolitical and Regional Changes", Institute of Legal and Political Research of ASM, Chișinău, 2016, pp. 45-69.
5. CUȘNIR V., GLAVAN B. Special investigations against crime one year after the reform: between expectations and reality. In: Legea și Viața, Special Issue, 2025, pp. 710-712.
6. GLAVAN B., CICALA A. The principle of proportionality in special investigative activity: between formal reform and operational blockage. In: Proceedings of the Scientific Conference "Romanian Gendarmerie – Traditions and Perspectives", 13th Edition. Bucharest: Ministry of Internal Affairs Publishing House, 2026, pp. 171-182.
7. GLAVAN B., CUȘNIR V. Special investigations in the service of public safety and the rule of law: challenges of legal regulation and democratic oversight in the Republic of Moldova. In: International Scientific Conference "Challenges and Strategies in Public Order and Safety", 11th Edition. Bucharest, 20-21 November 2025, pp. 191-201. Available: https://academiadepolitie.ro/wp-content/uploads/2025/05/Volum-Conferinta-APAIC-2025.pdf.
8. GLAVAN B., CUȘNIR V., CICALA A., BOTNARI I. Modern Special Investigations against Crime: Foundations, Realities and European Perspective. Chișinău: [s.n.], 2025 (Blitz Poligraf), 635 p. ISBN 978-5-86654-596-4.
9. GLAVAN B., CUȘNIR V., MARINESCU R. The use of the results of special investigative measures carried out outside criminal proceedings: a comparative analysis Romania – Republic of Moldova. In: Protection of Fundamental Human Rights and Freedoms in the Process of Ensuring Public Order and Safety. Proceedings of the National Scientific Conference with international participation (5th Edition), 10 December 2025.

Chișinău: "Ștefan cel Mare" Academy, 2026, pp. 625-636.
10. Law of the Republic of Moldova No.59 of 29.03.2012 on Special Investigative Activity. In: Official Gazette, No.113-118/373 of 08.06.2012, pp. 6-12.
11. Law of the Republic of Moldova No.249 of 14.08.2025 on National Security. In: Official Gazette of the Republic of Moldova, No. 463-466 of 04.09.2025, Art. 627.
12. Explanatory Note to the draft Law on the National Security of the Republic of Moldova and on the Amendment of Certain Normative Acts. Chișinău, 2025, 30p. Available: https://parlament.md/content/Comisii/2025/CSN/Proiect%20Legea%20securitatii%20nationale%20NI.pdf. (Accessed: 25.03.2026).
13. PÂNTEA A. Reasonable suspicion: the national criminal procedural framework and the case-law of the European Court of Human Rights. PhD thesis. Chișinău, 2018, 213 p.
14. General Prosecutor's Office of the Republic of Moldova. Final Report on Special Investigative Activity carried out during 2024. No.5-2d125 of 04.02.2025. Chișinău, 2025. Available: https://parlament.md/pRAPORT-PG. (Accessed: 30.03.2026).
15. General Prosecutor's Office of the Republic Of Moldova. Final Report on Special Investigative Activity carried out during 2025. No.5-ld/26-42 of 13.02.2026. Chișinău, 2026. Available: https://www.parlament.md/RAPORT_ASI_2025. (Accessed: 30.03.2026).
16. National Security Strategy of the Republic of Moldova. Decision No.391 of 15.12.2023 approved by the Parliament of the Republic of Moldova. Available: https://www.legis.md/cautare/getResults7doc_id=141253&lang=ro.
17. VERVAELE John A.E. Special procedural measures and respect of human rights: general report. In: Revue internationale de droit pénal, 2009, No.80(1), pp. 19-73.

CZU 343.541-053.2 **DOI: https://doi.org/10.5281/zenodo.20795073**

THE REGULATION AND INVESTIGATION OF THE OFFENSE OF SEXUAL ACTS WITH A MINOR

Mihai-Alexandru STANCIU,
PhD, University Lecturer,
Faculty of Law and Administrative Sciences,
"Ovidius" University of Constanta, Romania,
Chief Prosecutor, Prosecutor's Office, Constanta District Court,
Romania
ORCID: 0009-0009-4953-7275

Abstract
This paper set out to analyze the evolution of the Romanian legislative framework regarding the criminalization of the offense of sexual acts with a minor, starting from the regulation under the former Criminal Code up to the latest substantive amendments introduced not only by the adoption of the new Criminal Code, but especially more recently, which led to a complete reconfiguration of the criminalization and of the way in which the state has understood to relate to such particularly serious acts. At the same time, the paper aims to highlight the need for the widespread adoption of techniques for interviewing minors, the provision of special rooms adapted for carrying out activities involving minors, as well as special measures for investigating such acts, without which holding those responsible criminally liable remains difficult to achieve, especially because in many cases the reporting of the acts to the criminal investigation authorities does not occur immediately after their commission, which makes the gathering of solid evidence difficult.
Keywords: NICHD-r Protocol, interviewing minor victims, age of sexual consent.

REGLEMENTAREA ȘI INVESTIGAREA INFRACȚIUNILOR CONTRA LIBERTĂȚII ȘI INTEGRITĂȚII SEXUALE A MINORILOR

Abstract
Lucrarea și-a propus o analiză a evoluției cadrului legislativ românesc privind incriminarea infracțiunilor contra libertății și integrității sexuale a minorilor în general și a celei de act sexual cu un minor în special, pornind de la reglementarea din vechiul Cod penal și până la ultimile modificări de substanță operate nu doar prin adoptarea noului Cod penal, dar mai ales recent, ceea ce a condus la o reconfigurare totală a incriminării și a modului în care statul a înțeles să se raporteze la astfel de fapte deosebit de grave. Totodată, lucrarea urmărește să scoată în evidență necesitatea adoptării pe scară largă a unor tehnici de audiere a minorilor, a dotării cu încăperi speciale adaptate pentru desfășurarea activităților cu minorii, dar și a unor măsuri speciale de investigare a unor astfel de fapte, fără de care tragerea la răspundere penală a celor vinovați de comiterea lor rămâne dificil de atins, în special din cauza faptului că în multe dintre cazuri sesizarea organelor de urmărire penală nu survine imediat după comiterea faptelor, ceea ce face ca strângerea unor probe solide să fie greu de înfăptuit.
Cuvinte-cheie: protocol NICHD–r, audiere victime minore, vârsta consimțământului sexual.

Introduction. Part of the offenses against the person regulated by the Criminal Code [1], offenses against sexual freedom and integrity in general, and those directed against minors in particular, which will be the focus of this analysis, have over time displayed a

particular characteristic through the gravity of their consequences for victims, especially on a psychological level.

The challenges in preventing and combating such acts have consisted, first of all, in finding a regulatory approach that responds as concretely as possible to the need to protect minor victims, including from the perspective of determining the age from which it may be presumed that a minor can express valid consent to engage in sexual activities, and secondly in identifying investigation and research methods capable of leading to the formulation of a solid criminal accusation and ultimately to the conviction of those who committed such acts.

Throughout the period of application of the former Criminal Code [2], from 1968 to 2014, the regulation of these offenses benefited from stability which, however, proved to be far too rigid in relation to the evolution of society, to which it could no longer offer adequate legal protection. By adopting the new Criminal Code in 2009 [1], effective from 1 February 2014, the aim was to align Romanian legislation with the international norms and standards existing in this field, something that was not fully achieved from the outset and which, also taking into account the existing social realities, required successive legislative amendments.

Methods and materials applied. Because of the complexity of analyzing all offenses against sexual freedom and integrity in this paper, we will focus our attention on the offense of sexual acts with a minor and on the offense of sexual corruption of minors, which we will present from the comparative perspective of the legislative amendments that occurred over time and of the implications these amendments brought, such as the decriminalization of certain acts, the tightening of the sanctioning regime, or the regulation of new grounds for non-punishment.

The offense of sexual acts with a minor was regulated by the former Criminal Code under Article 198, which criminalized, in its basic form, any sexual act with a minor under the age of 15. If the minor was between 15 and 18 years old, the act constituted an offense only if the active subject had the status of guardian, curator, supervisor, caretaker, attending physician, teacher, or educator and used that status, or if he abused the victim's trust or his authority or influence, the penalty provided by law being imprisonment from 3 to 10 years. In addition to the basic form, the law also provided for certain aggravated forms. It is important to mention that the law required the minor to have expressed consent to participate in sexual activities, consent considered perfectly valid as long as the minor had reached the age of 15, the age from which the minor was considered sufficiently physically and mentally developed to begin sexual life. If the minor had not reached this age, the act constituted the offense of sexual acts with a minor, and if the minor's consent did not exist or if the minor was too young to be considered capable of validly expressing consent, matters established in relation to his or her level of physical and mental development, the act was classified and punished more severely, as the offense of rape.

On 17 December 2011, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography, was published in the Official Journal of the European Union, with a transposition deadline for Member States of 18 December 2013.

The purpose of that normative act was to establish minimum rules concerning the definition of criminal offenses and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography, and the solicitation of children for sexual pur-

poses, and it introduced provisions intended to ensure better prevention of such offenses and better protection of their victims [3, Art.1]. The Directive established that "child" means any person below the age of 18 years, and that "age of sexual consent" means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child [3, Art.2]. In practice, it left Member States a margin of appreciation in determining the age from which minors may consent to sexual activities. At the same time, it left to Member States the decision whether to criminalize consensual sexual activities between persons close in age and in psychological and physical development or maturity, insofar as the acts involved no abuse [3, Art.8].

By adopting the new Criminal Code [1], a series of important changes were introduced in the regulation of the offense of sexual acts with a minor. First, a distinction was made between sexual acts involving sexual intercourse, oral or anal sexual acts, or any other acts of vaginal or anal penetration, which constitute the offense of sexual acts with a minor [1, Art. 220], and those consisting in committing against a minor, or causing the minor to endure or perform, any other sexual act than those mentioned, which constitute the offense of sexual corruption of minors [1, Art. 221]. Previously, any act of a sexual nature committed with a minor, under the conditions of the law, fell under the scope of the same offense. Secondly, the conditions under which acts in the first category constituted an offense were fundamentally changed, in the sense that the act committed with a minor aged between 13 and 15 constituted an offense punishable by imprisonment from 1 to 5 years (basic form), as did the act committed with a minor under 13, punishable by imprisonment from 2 to 7 years (aggravated form), in both cases provided that the age difference exceeded 3 years. If the act was committed by an adult who abused his authority or influence over the victim, and the minor was between 13 and 18 years old, irrespective of the age difference between them, the act constituted an offense punishable by imprisonment from 2 to 7 years. The new regulation also provided for a number of other aggravated forms. It must be emphasized that the legislator maintained the age of 15 as the age of sexual consent. As regards acts in the second category, classified under the offense of sexual corruption of minors, they fell under the scope of the offense only if committed with a minor under the age of 13, provided that the age difference exceeded 3 years, and were punishable by imprisonment from 1 to 5 years. Besides the basic form, the law also provided for a series of aggravated forms.

A first amendment after the adoption of the new Criminal Code occurred in 2016 [4] and sought to limit criminalization, where the act was committed by an adult with a minor, only to situations in which the minor was aged between 15 and 18 years old (not 13-18 as previously) and if it occurred in one of the following circumstances:

1. The minor is a family member of the adult;

2. The minor is in the care, protection, education, custody, or treatment of the offender, or the offender abused his recognized position of trust or authority over the minor, or the particularly vulnerable situation of the latter, as a result of a mental or physical disability or a state of dependency;

3. The act endangered the life of the minor; 4. the act was committed for the purpose of producing pornographic materials. The condition that the adult should have abused his authority or influence over the victim was removed. Minor changes were also made regarding the offense of sexual corruption of minors.

The second legislative amendment, more substantial, occurred at the end of 2020 [5]. The most important change being the increase of the age of sexual consent from 15 to 16 years. Amendments were made in respect of both offenses: sexual acts with a minor

and sexual corruption of minors. Thus, in the case of the offense of sexual acts with a minor, the basic form was amended so that the act constituted an offense if committed with a minor aged between 14 and 16 years (not 13-15 as previously) and remained punishable by the same sentence of 1 to 5 years' imprisonment, while the aggravated form was amended so that the act was committed with a minor under the age of 14 (not 13 as previously) and was punishable with the same special minimum of 2 years' imprisonment but with a higher special maximum of 9 years (previously 7 years), in both cases provided that the age difference exceeded 3 years. In the other aggravated form, where the act was committed by an adult against a minor, the special maximum was also increased from 7 to 9 years, and the circumstances in which the act committed by the adult could constitute an offense were amended. At the same time, other aggravated forms were provided, punishable by imprisonment of up to 10 or 12 years, which, however, due to the multitude of regulated circumstances of commission, some of them very specific, risk making their practical application cumbersome. With regard to the offense of sexual corruption of minors, the amendments were also substantial, the age threshold of the minor for the act to constitute an offense being increased from 13 to 14 years, and a series of aggravated forms were also regulated.

Certainly the most important amendments occurred during 2023, through the adoption of Law no. 217/2023 [6], which amended and supplemented a series of normative acts, entering into force, as regards the amendments made to the Criminal Code and the Criminal Procedure Code, at the beginning of the following year. Because certain amendments were found by practitioners to raise problems of interpretation and application during the same year, before their announced entry into force, a new law was adopted [7], which removed the criticized deficiencies, at least in part.

These two laws rewrote, according to a new conception, the way in which offenses against the sexual freedom and integrity of minors are regulated, by repealing the offense of sexual acts with a minor, provided under Article 220 of the Criminal Code, and introducing two new offenses: rape committed against a minor, provided under Article 218^1 of the Criminal Code, and sexual assault committed against a minor, provided under Article 219^1 of the Criminal Code.

The essence of these new regulations is that the law presumes in all cases that a minor under the age of 16 cannot express valid consent to engage in sexual intercourse or other sexual acts with an adult, even in the absence of coercion, deprivation of the ability to defend oneself or to express one's will, or exploitation of such a state, as long as the age difference between the adult and the minor is greater than 5 years.

Otherwise, but strictly in situations where no coercion is used, no deprivation of the ability to defend oneself or to express one's will occurs, and no exploitation of such a state is involved, the ground for non-punishment provided by law applies and, although the act constitutes an offense, the offender's criminal liability cannot be engaged. It is therefore considered that in all cases where the minor has not reached the age of 16, his or her consent to participate in sexual activities cannot be regarded as validly expressed in relation to his or her level of mental and physical development, and the act constitutes an offense in all cases, but the bringing of the adult offender to criminal liability depends on whether or not the legal ground for non-punishment regarding the age difference applies.

Where the minor is aged between 16 and 18, the act constitutes an offense when committed by an adult, but only under certain circumstances that give the act an aggravated character, such as where the minor is a family member of the adult, or the minor is in the care, protection, education, custody, or treatment of the offender, or where the act

resulted in bodily injury or endangered the life of the minor in any way.

If the offender is a minor, the act constitutes an offense only when the minor victim is under the age of 14, provided, however, that the age difference between the minors is greater than 5 years, otherwise the ground for non-punishment applies. In practice, it appears that in this variant, in order for the minor offender's criminal liability to be engaged, the injured minor can never be between 13 and 14 years old, because the offender would have to be over 18 years of age and therefore could no longer be considered a minor.

An original and debatable manner of regulating the sanctioning treatment consists of the provision in Article 218[1] para. 11, which stipulates that the act is punished "according to the provisions of Article 114", yet a reading of the referenced provisions shows that they concern the general consequences of the criminal liability of minors. According to the philosophy of the current Criminal Code, it is clear that only educational measures, whether custodial or non-custodial, may be applied to minors, so their application by the court should not raise practical problems. It is, however, difficult to understand why, in the case of the aggravated form of the same offense, which involves on the part of the minor offender acts of coercion, deprivation of the victim's ability to defend herself or himself or to express her or his will, or exploitation of such a state, the law provides that it shall be punished with imprisonment from 3 to 10 years and the prohibition of certain rights. It is obvious that an offender who was a minor at the time of the act cannot be sentenced to a punishment, even if the law provides for one. The court will have to sanction the minor under the general conditions governing the criminal liability of minors, by applying an educational measure. Yet, given that the aggravated form concerns strictly cases in which the act is committed by a minor, the real intention of the legislator in providing for punishments cannot be inferred.

Otherwise, the classic distinction between the offense of rape and that of sexual assault is maintained, in the sense that the former concerns strictly sexual intercourse, oral or anal sexual acts, as well as any other acts of vaginal or anal penetration, while the latter concerns any act of a sexual nature, except for those that form part of the material element of the offense of rape.

A desire of the legislator to strongly discourage such acts can be observed through the increase of the penalty limits for offenses of this kind, imprisonment penalties ranging from 7 to 12 years when there is no coercion and from 8 to 15 years when coercion or other methods of overcoming the victim's consent are used.

The legislator's intention to adopt as comprehensive a criminal regulation as possible for offenses affecting the sexual freedom and integrity of minors, with a severe sanctioning regime intended to deter, is commendable, but I consider that the legislative manner, characterized by frequent changes of conception, by the gradual amendment and addition of new aggravated forms intended to punish different behaviors, outcomes produced, or purposes pursued in the commission of the acts, certainly makes the entire regulation difficult to correlate and apply in practice, sometimes even leading to situations of inequity between similar cases. One may imagine, for example, the situation in which the minor victim is 15 years and 11 months old, and the adult offender with whom he or she engages in sexual intercourse is 20 years and 11 months old. In this case, the ground for non-punishment applies because the age difference between the two does not exceed 5 years. However, if the adult is 20 years, 11 months, and 1 day old, he will no longer benefit from the ground for non-punishment and will be liable to imprisonment from 7 to 12 years and the prohibition of certain rights. Of course, for criminal liability to arise it is required that the adult offender knew the age of the minor, because subjectively the act must be

committed with intent, but even so, the practical application of the legal provisions, in borderline situations, may be quite difficult.

Discussions and results obtained. In this section we will address the issue of evidence in offenses against the sexual freedom and integrity of minors. In matters of evidence, the Criminal Procedure Code refers strictly to the procedure to be followed for the administration of each piece of evidence within the criminal trial, for the purpose of obtaining means of evidence on the basis of which the legal truth may be established, with the aim that it be as close as possible to the factual truth. With a few exceptions[1], however, it does not provide the directions to be followed by judicial authorities in gathering evidence and discovering the truth, but it categorically imposes evidentiary standards that must be met for the adoption of procedural measures, such as the initiation of criminal proceedings against a defendant, the indictment, or the conviction of guilty persons. Judicial authorities are therefore obliged to make every effort to identify all relevant and useful evidence that could be administered in the case and to reach the standards required in order to formulate a criminal accusation. In all cases, in the absence of solid evidence, if after the exhaustion of the evidentiary proceedings there remains doubt as to whether the suspect or defendant committed the act, such doubt will benefit that person and will be interpreted in his favor, leading to a decision of dismissal or acquittal. Following numerous discussions and lectures, certain methodologies have emerged in practice to support those investigating different types of offenses, intended to help apply, as uniformly as possible, investigative tactics which, in difficult or complex cases, have led to the best results.

In the matter of the offenses covered by this paper, the evidentiary process is certainly particularly difficult because in most cases they are committed without any persons present other than the perpetrator and the injured person, so that in the absence of direct and solid evidence, the evidentiary standard required by law for obtaining convictions cannot be met. Added to this is the fact that the injured persons are minors, sometimes of a very young age and with a low level of psychosocial development, which raises serious questions regarding their understanding and narration of the truth in a criminal investigation.

In recent years, in prosecutor's offices in Romania, a protocol for interviewing minor victims called the Revised NICHD Protocol (NICHD-r), developed by the U.S. National Institute of Child Health and Human Development [8], has increasingly been implemented. It represents a standardized method for interviewing child victims or witnesses, a scientifically grounded instrument considered the "gold standard" in interviewing children.

Certainly, it does not provide a "magic solution" for discovering the truth, but it offers multiple benefits compared with a classic interview, such as increasing the quality of statements by maximizing narrative and spontaneous information and reducing memory distortions, reducing children's suggestibility by limiting the interviewer's intervention in their answers and preventing contamination of the statement, protecting children during the interview by creating a safe, predictable, and non-threatening setting and by reducing the risk of retraumatization, standardizing interviews by ensuring a uniform procedure regardless of the interviewer and increasing the comparability and professionalism of interviews, but especially improving evidentiary value by obtaining legally reliable infor-

[1] For example, according to Art. 184 para. (1) of the C.P.P., in the case of crimes committed by minors between the ages of 14 and 16, in the case of the killing or injury of a newborn child or fetus by the mother, as well as when the criminal investigation body or the court has a doubt about the discernment of the suspect or defendant at the time of committing the crime that is the subject of the accusation, a forensic psychiatric examination is ordered.

mation, increasing the credibility of testimony, and increasing the chances of detecting false statements.

It is structured into several phases beginning with the introduction, followed by the pre-substantive phase, the substantive phase, and the conclusion.

In the introductory phase, the first contact between the interviewer and the child takes place, on which occasion the interviewer introduces himself or herself and explains his or her role to the child and presents the room in which they are located, including by showing the recording cameras, while the child's physical and emotional state is observed.

In the pre-substantive phase, a relationship of trust is built and the child's ability to narrate is trained. The protocol provides the manner of approach for several situations possible in practice, including, for example, the situation where the child does not respond or shows non-verbal signs of avoidance or resistance. The child is invited to recount, in turn, a pleasant event and an unpleasant event that happened at kindergarten or at school, unrelated to the reported incident, with the emphasis on what the child felt on those occasions and what thoughts or emotions he or she had. Next, the aim is to understand and practice the rules of the interview by presenting the concepts of "I don't understand," "I don't know," "wrong," and "correct." Before the interview, a recent, positive, meaningful event, chronologically close to the alleged abuse and in which the child participated actively, will be identified.

In the substantive phase, the actual recounting of the reported incident takes place and the aim is to obtain all information relevant to the case. The questions asked by the interviewer seek to detect and manage forms of reluctance and resistance and to explore as much as possible the situation of abuse. Breaks are permitted when needed.

It is recommended that the interview take place in a specially adapted and arranged room so that minors may feel in their own environment, equipped with furniture and walls painted in warm, welcoming colors, preferably with a small play area or a table for coloring and drawing. It is mandatory that only the child and the interviewer be present in the room, so in order to ensure compliance with criminal procedural requirements that impose the presence of a legal representative, a representative of public child protection services, lawyers, or other persons whom the law permits to attend the interview, they should attend from an adjacent room with direct view through a one-way mirror or via audio-video transmission systems.

Of course, the child's statement alone will in most cases not be sufficient to charge and convict the sexual abuser, especially when the latter chooses not to give a statement or even denies committing the acts, but it substantially increases the chances that the statement obtained through the child's free narration, with minimal elements of suggestion, may be corroborated with other evidence, even indirect, which together may form the conviction that the act exists, constitutes an offense, and was committed by the person under investigation.

We will next present Case M.V. from the practice of the Prosecutor's Office attached to the Constanta District Court in order to highlight the importance of using the NICHD-r protocol in such cases.

Top of Form Thus, on 01.11.2023, the mother of the minor A.C., aged 11, notified the police that during the period 2019-2021, her daughter, who was in the care of her grandmother, was "caressed and touched in the intimate area, at night", by M.C., the grandmother's cohabitant. During the period 2019-2021, both of the girl's parents were abroad. The girl's grandmother had died prior to the police notification.

The mother submits to the case file a screenshot representing a written conversa-

tion between her daughter and grandmother on 23.10.2023, from which it results that the girl told her grandmother about what happened, but that she did not tell her at the time because she was afraid of upsetting her grandmother or getting kicked out of the house.

The minor was examined by a forensic doctor and it was concluded that she had a compliant hymen, which allows for sexual intercourse without tearing, and no changes were found at the level of the anal canal and orifice.

From the investigations and from the hearing of several witnesses, close to the family, it emerged that the grandmother, born in 1959, had a poor state of health and had been moving with difficulty for several years, while M.V., born in the same year, had a good state of health, and the relationship between the two began 10 years ago. M.V. had no home or job, the material means of existence being provided by A.C.'s parents, who sent them money from abroad.

It was established that M.V. was very close to A.C. and spent a lot of time with her, accompanied her to and from school, singing lessons, competitions (both in her hometown and in other towns in the country, where they sometimes spent several days). M.V. and A.C.'s grandmother slept in different rooms, and A.C. sometimes slept with M.V. So, A.C. told several people about the sexual abuse committed against her by M.V. in October 2023, shortly before the police were notified.

The investigations also revealed that M.V. had been definitively convicted twice for committing rape crimes, the first time in 1978, when he was 19 years old – an act committed together with two other defendants on two women, and the second time in 1986, when he was 27 years old – an act committed on his wife's sister, aged 16, with whom he lived. A.C.'s family members were not aware of these convictions.

Minor A.C. was questioned by the prosecutor according to the NICHD protocol, on which occasion she reported that in the summer of 2019, when she was 7 years old, she slept with "Papu", because she was afraid to sleep alone. He stroked her back, as he usually did, because she couldn't fall asleep otherwise, then he undressed her and touched her "in the small thing" and "in the big thing", after which "something strange, thick, like human skin entered the big thing". She didn't move and pretended to be asleep. He didn't say anything, but she heard him breathing strangely, trembling, and felt him shaking, then he dressed her and they slept. Minor A.C. also stated that events like the one described above had happened "7 or 10 times a month", because sometimes she slept with "Papu", sometimes with her grandmother. One evening "Papu put where the boys do their small thing where she does her small thing", she felt "human skin, a little wet", he moved back and forth for 5 minutes and felt a little pain. Then he went to the bathroom, from where she heard him "do Ah, as if something hurt him". The last event of this kind happened "like the first time", when she was 9 years old, during 2020, in the living room of the apartment where they lived

A.C. also stated that later, after she turned 9, she asked some schoolmates what the word "sex" meant. After the discussion with her classmates, she began to understand what she had watched one evening with "Papu" on TV. When she was invited by the prosecutor to say more about what she had seen on TV, she wrote the word "pornography" on a sheet of paper. She did not understand at the time what that film represented or what "Papu" was doing to her at night. After she began to understand, she no longer wanted to sleep with M.V. and then decided to tell her grandmother, and then her mother.

The psychological expert report of the injured person A.C. concluded that she presents a symptomatology that is usually associated with prolonged and repeated traumatic experiences of sexual assault, physical violence, emotional abuse and neglect. The injured

person was exposed to pornographic films for a period of time, the meaning of which she only realized before the disclosure. The statement given by the injured person has sufficient quality to argue that the statements are possibly true, based on a real experience and that it is unlikely that she could produce this statement without having actually experienced these experiences.

At the same time, it concluded that no external influences on her or suggestions from other sources were identified. At the reported time of the onset of the sexual abuse, the minor was not aware of what was happening. In the case of the injured person, there can be no question of consent to the facts investigated. The injured person needs long-term psychotherapy, as a result of the acts of sexual abuse to which she was exposed.

The defendant M.V. fled immediately after the funeral of A.C.'s grandmother, where he learned that the girl had revealed the episodes of abuse, taking with him a gold chain belonging to the girl. He was found two weeks later, while making plans to leave the country. He stated that the injured person's father would try to get revenge on M.V.'s daughter, through him, for a 10-year-old dispute. He could not explain why A.C. stated that he had sexually abused her. He refused to be tested by a polygraph, stating that he had "been tested before".

The forensic psychiatric report of M.V. concluded that he was very cautious and vigilant in terms of "disclosing" his own identity and was diagnosed with a mixed personality disorder (paranoid, antisocial and dependent), without any evidence of deviant sexual behavior, a tendency to obtain sexual satisfaction from relationships with minors without their consent, or psychosomatic disorders of a pedophile and/or sexual abuser.

The defendant M.V. was sent to trial, in a state of preventive arrest, for committing the crimes of aggravated and continued rape, continued sexual corruption of minors, ill-treatment of a minor and theft. He was sentenced in the first instance to 15 years in prison, a solution that remained final after the appeal. It is noted that the only direct evidence in this case consisted of the statement of the minor injured person who freely related, in his own words, what he experienced and was able to perceive in relation to his age and psychosocial development.

Conclusions. A constant concern of the Romanian legislator is observed to prevent and combat as efficiently as possible crimes against sexual freedom and integrity, especially those concerning minors, through the legislative amendments brought and which aimed to align Romanian legislation with international standards in the matter, with an emphasis on a harsh sanctioning regime, intended to deter. It is noteworthy that the legislator's option towards an extensive, broad legislation, which would differentiate from the point of view of abstract danger, the different circumstances of committing the acts. However, it cannot be overlooked that such amendments operate far too often, which can create confusion both among those called upon to apply the law, and among its recipients. In addition to the difficulties related to a legislative framework in a continuous state of evolution, investigative bodies are called upon to identify the best methods of investigation and evidence collection, in an area where the utmost caution must be taken into account precisely those whom the state must protect, namely minor victims.

Bibliographical references

1. Law No.286/2009 on the Criminal Code. In: Official Gazette No.510 of 24.07.2009. In force since 01.02.2014; Special Part. Title I. Crimes against the person.
2. Criminal Code of 1968, republished in the Official Gazette No.65 of 16.04.1997.
3. Directive 2011/93/EU of the European Parliament and of the Council on combating

the sexual abuse and sexual exploitation of children and child pornography.
4. Emergency Ordinance 18/2016 amending and supplementing Law No.286/2009 on the Criminal Code, Law No.135/2010 on the Criminal Procedure Code, as well as supplementing Art.31 para. (1) of Law No. 304/2004 on judicial organization. In: Official Gazette No.389 of 23.05.2016. In force since 23.05.2016.
5. Law No.217/2020 amending and supplementing Law No.286/2009 on the Criminal Code, as well as amending Art. 223 para. (2) of Law No.135/2010 on the Criminal Procedure Code. In: Official Gazette No.1012 of 30.10.2020. In force since 02.11.2020.
6. Law No.217/2023 amending and supplementing Law No.286/2009 on the Criminal Code, Law No.135/2010 on the Criminal Procedure Code, as well as the Audiovisual Law No.504/2002. In: Official Gazette No.634 of 11.07.2023. In force with regard to the amendments to the Criminal Code and the Criminal Procedure Code starting with 01.01.2024.
7. Law No.424/2023 amending and supplementing Law No.217/2023 amending and supplementing Law No.286/2009 on the Criminal Code, Law No.135/2010 on the Criminal Procedure Code, as well as the Audiovisual Law No.504/2002. In: Official Gazette No.1194 of 29.12.2023. In force since 01.01.2024.
8. The Protocol for interviewing minor victims (NICHD-r). Developed by the U.S. National Institute of Child Health and Human Development. Available: https://nichdprotocol.com/the-nichd-protocol.
9. Guide to good practices in the field of techniques for interviewing minors. Available: https://www.juridice.ro/wp-content/uploads/2024/06/A2.3-Ghid-audiere-minori_site_final.pdf.
10. Theoretical and practical guide on the crime of rape. Available: https://www.mpublic.ro/sites/default/files/PDF/indrumar.pdf.
11. Methodological guide on interviewing minor victims of violence. Available: https://fonpc.ro/wp-content/uploads/2021/11/Ghid_audierea_minorilor_victime_violentei.pdf.

CZU: 341.222 **DOI: https://doi.org/10.5281/zenodo.20795182**

THE UNDERGROUND OF INSECURITY: TUNNELS AND HYBRID WARFARE ON THE EASTERN BORDER OF THE EUROPEAN UNION

Lucian Gabriel PEREȘ,
PhD, Associate Professor,
Border Police Department,
"Alexandru Ioan Cuza" Police Academy,
Bucharest, Romania
ORCID: 0009-0004-5307-6727

Abstract

The article studies the evolution of the crisis at the Polish-Belarusian border, marking a transition from ground-level irregular migration to the sophisticated use of underground tunnels as instruments of hybrid aggression. The research argues that these underground infrastructures represent a new stage in "Gray Zone" warfare, where the tunnel is no longer a simple escape route for migrants but a strategic tool for penetration and sabotage sponsored by hostile states and organized crime.

The study analyzes the dynamic interplay between the Polish "Smart Border" defenses – characterized by the integration of seismic sensors, thermal imaging, and AI-driven data fusion – and the high adaptability of hostile state actors. By using a hybrid methodological approach, combining technical infrastructure analysis with geopolitical strategy, the paper demonstrates how the underground has become a critical front for European security. The findings suggest that while technological advancements have significantly enhanced detection capabilities "at any depth," the primary challenge remains the economic and logistical exhaustion of the target state.

The article concludes that the "Underground of Insecurity" dictates a collective European response, shifting the focus from static physical barriers to dynamic, intelligent surveillance ecosystems capable of defending the territorial and political integrity of the European Union in the 21st century.

Keywords: border security, Poland-Belarus border, migration pressure, external border, underground tunnels, Artificial Intelligence, data fusion, strategic penetration, hybrid conflict.

SUBTERANUL INSECURITĂȚII: TUNELURILE ȘI RĂZBOIUL HYBRID LA GRANIȚA ESTICĂ A UNIUNII EUROPENE

Abstract

Articolul examinează evoluția crizei de la granița polono-belarusă, marcând o tranziție de la migrația neregulamentară la nivelul solului, la utilizarea sofisticată a tunelurilor subterane ca instrumente de agresiune hibridă. Cercetarea susține că aceste infrastructuri subterane reprezintă o nouă etapă în războiul din „Zona Gri", unde tunelul nu mai este o simplă rută de evadare pentru migranți, ci un instrument strategic pentru penetrare și sabotajul sponsorizate de state ostile și crima organizată.

Studiul analizează interacțiunea dinamică dintre apărarea „frontierei inteligente" poloneze – caracterizată prin integrarea senzorilor seismici, a imagisticii termice și a fuziunii datelor bazate pe inteligență artificială – și adaptabilitatea ridicată a actorilor statali ostili. Prin utilizarea unei abordări metodologice hibride, combinând analiza infrastructurii tehnice cu strategia geopolitică, lucrarea demonstrează modul în care subteranul a devenit un front critic pentru securitatea europeană.

Concluziile sugerează faptul că, deși progresele tehnologice au îmbunătățit semnificativ capacitățile de detectare „la orice adâncime", principala provocare rămâne epuizarea economică și logistică a statului țintă. Articolul concluzionează că „Subteranul insecurității" necesită un răspuns european colectiv, mutând accentul de la barierele fizice statice la ecosisteme de supraveghere dinamice și inteligente, capabile să apere integritatea teritorială și politică a Uniunii Europene în secolul XXI.

Cuvinte-cheie: securitatea frontierelor, frontiera Polonia-Belarus, presiune migratorie, tuneluri subterane, inteligență artificială, fuziunea datelor, penetrare strategică, conflict hibrid.

Introduction. **Political and Strategic Impact**. The technological evolution of aerial survillance systems has shifted the center of gravity of tactical invisibility to the underground. In the context of hybrid actions, underground infrastructure is no longer just a defensive refuge, but is actively integrated into asymmetric destabilization strategies. This reconfiguration of the battlespace transforms the underground into an operational domain where threats can be projected beyond visible demarcation lines, eroding predictability and classical territorial security.

The use of the underground tunnel as a tool of migratory pressure and sabotage marks a new stage of hybrid conflict. Although defensive technology has evolved rapidly, transforming the border into a "smart" one, the challenge remains constant due to the adaptability of the state actors involved, increasingly aggressive. According to recent communications related to the digitalization of NATO borders and the strengthened cooperation between NATO and the European Union (EU), the message is quite clear: *any incursion, regardless of depth, will be detected by the fusion of artificial intelligence data and the strengthened military presence*.

The tunnel was not designed as an escape route for migrants, but as a strategic penetration tool for the state that is tackling a hybrid aggression. The European Union and its member states spend significant amounts of money on securing external borders. However, studying the dynamics at the Polish-Belarusian border, moving from simple fences to underground infrastructure and purpose-built tunnels, goes beyond the scope of border security. This becomes an essential case study for European security in the 21st century, and member states need to be aware of the issue as a whole.

Research on this topic highlights the tension between a state's need to protect its territorial integrity and its international obligations regarding asylum and respect for human rights. Politically, the discovery of the use of tunnels justified exceptional measures such as a state of emergency and press restrictions, which set a precedent for how democracies can manage hybrid crises. Press restrictions were justified on the grounds of preserving "state secrets" – the argument being that publishing certain details could help organized crime networks or the actors involved.

A question arises in this context: *where does the right of the state to guard its border end and where do the fundamental rights of "migrants" begin*? The balance is difficult to balance. On the one hand, we have the duty of governments to maintain the rule of law and, on the other hand, the moral and legal obligation of a state to offer a form of protection to foreigners coming to the border, thus generating a turning point that tested the image of Poland and the European Union in relation to the democratic values assumed through the community acquis.

This type of situation has forced the European Union to decide whether or not to finance the construction of physical barriers (fences and anti-tunnel sensors) from common budgets, a subject that has divided the approaches of European states. The initial investments were made by the states directly confronted with this crisis, in this case Poland, Latvia and Lithuania, which built their border fences from their own budgets.

For example, for the Eastern Shield Project (Polish: Tarcza Wschód), Poland initially invested from its own resources (around 2.3-2.5 billion euros approved for the period 2024-2028), then managed to obtain European Funds through the SAFE Program (English: Security Action for Europe), around 43 billion euros.

Although not a direct "funding" in money, there have also been contributions in the form of resources and expertise from allies such as Germany and the Baltic States cooperating together in the "Baltic Defense Line" Project, allowing joint procurement of sur-

veillance equipment, which lowers the unit price of Artificial Intelligence (AI) technologies and sensors. Partial co-financing in terms of logistical infrastructure and interoperability is ensured by NATO.

It should be noted that migrants are transformed into "weapons" changing the classic definition of political and military aggression which defines aggression as an *external, visible and, most of the time, military act* [1].

From the strategic point of view, the external border of the European Union has become a testing ground for Gray Zone Warfare. This is a conceptual space located between traditional peace and conventional war. It is a type of conflict in which an aggressor state attempts to gain strategic advantages without triggering a direct military response (such as activating NATO's Article 5). According to the reference author Michael J. Mazarr, in his work "*Mastering the Gray Zone: Understanding a Changing Era of Conflict*", published by the U.S. Army War College Press in 2015, for a conflict to be considered "in the gray zone", it must tick three essential elements:

- Ambiguity, that is, the aggressor acts in such a way that he can deny involvement or claim that his actions are of a different nature (for example, about the migration crisis in the area, Belarus claims that it is a "spontaneous humanitarian problem", not a planned operation);

- The actions must be below the threshold of armed conflict, that is, aggressive enough to destabilize the target, but not so violent as to justify an invasion or a retaliatory bombing;

- The use of non-military instruments, that is, the use of economic pressure, cyber attacks, disinformation and, in this case, instrumentalized migration.

The tunnels are not just access routes for migrants, they can represent a tactical vulnerability through which saboteurs or undercover special forces can infiltrate. The Polish strategy shows a shift from "many soldiers" to "many sensors".

The strategic impact is that a state can now monitor hundreds of kilometers with reduced personnel, but becomes vulnerable to cyber-attacks and jamming. Iplementing of AI and autonomous drones is intended to send a strategic message to Minsk and Moscow: "*Any infiltration attempt is visible in real time*".

Purpose of the research. The chosen theme has a multidimensional significance, transforming a topical geopolitical topic into an academic analysis with major strategic implications.

The research highlights how authoritarian regimes on the external border of the European Union use asymmetric solutions, forcing EU member states to incur immense logistical costs.

Thus, an interested third state can use cheap labor to dig a tunnel, forcing the EU to invest billions in seismic sensors and AI, generating an economic and technological imbalance. The study provides a framework for understanding how NATO and the European Union must adapt their „shield" to respond to threats that do not involve tanks, but clandestine engineering.

By emphasizing that "*Member States must be aware of the issue as a whole*", the research takes on a warning role that must be taken into account. A tunnel under the external border is a security issue for all EU Member States, because once it enters the area of free movement, the "strategic penetration" is complete.

European solidarity is necessary at this time, because we are living in modern times with new concepts about how to carry out an aggression against a state and, implicitly, a union of states.

Methods and materials applied. The research is based on conceptual analysis and documentary synthesis, using the following specific methods and applied materials:

– *Case study*: focusing on the Polish-Belarusian border segment (especially the Białowieża Forest area) as a „laboratory" of new underground infiltration tactics;

– *Comparative analysis*: considering the evolution of the effectiveness of physical barriers (the 5.5 m fence) versus electronic barriers (Eastern Shield) in detecting subversive activities as well as changes in terminology, from "humanitarian crisis" to "hybrid aggression";

– *Examination of official press releases* from NATO, FRONTEX and especially the Polish Ministry of the Interior as well as information from the international press with references to these events, corroborated with reports from the Polish State Border Guard (Straż Graniczna) and statistics on crossing attempts, locations of discovered tunnels and materials used for their construction.

Specific Challenges in the Context of Hybrid Warfare. Considering the reports of specialized structures and the media [2], starting with the second half of 2025 and accelerating in the first months of 2026, it is observed that the security architecture of NATO's eastern flank has been forced to respond to a new dimension of hybrid threats that we have called – *the underground infiltration infrastructure*. If in previous years the migratory pressure orchestrated by the Moscow-Minsk axis manifested itself on the surface, the new discoveries indicate a shift towards bypassing engineering methods, designed to circumvent the physical and electronic barriers implemented by the European Union states at the external border.

The dynamics on the border between Belarus and Poland have evolved from a humanitarian and political crisis into a veritable technological and tactical "war of attrition". What began in 2021 as an illegal border crossing has today turned into an extremely sophisticated game of "cat and mouse".

At first, the main tactic was direct assault, meaning large groups of migrants, sometimes directed by Belarusian security forces, would try to pass through the wooded areas and swamps of the Białowieża Forest, located on the border between Poland and Belarus. The area is also a UNESCO site of inestimable ecological value.

The method used was to cut the barbed wire barriers. Poland urgently sent army forces to the border along with border guards and they responded by building a 5,5 meter-high steel fence, equipped with motion sensors and thermal imaging cameras (a real electronic barrier). This structure radically changed the way migrants infiltrated.

The tactics used to cross the fence were improvised ladders or "bridges", hydraulic jacks or various cutting tools, but also distraction: large groups simulated a crossing at one point to attract Polish patrols, while small groups discreetly passed through another place. As border surveillance with drones and surface sensors proved to be effective measures, another method was thought of – the underground method.

Initially, attempts were reported to dig small holes under the foundation of the fence, especially in areas where the soil allowed, then attempts were reported to pass through water discharge pipes or through riverbeds (in the Bug River area, for example, which is the border between Belarus and Poland for a section of 178 km), where the physical fence is more difficult to maintain [3].

This is not just about migration, but a hybrid conflict where technology plays a crucial role. Both sides use drones. Belarus uses them to monitor the activity of Polish patrols, and the Polish authorities to detect groups of migrants approaching the fence.

At the same time, there are reports of the use of lasers or bright lights by the Bela-

rusian side to blind Polish surveillance cameras during crossing attempts.

Since 2021, the situation has become extremely tense at the border, with Poland declaring border restriction zones to limit access by people who could help with the logistics of infiltration.

According to reports from Polish Border Guards in the Podlaskie region, four tunnels dug under the border with Belarus were identified during 2025. The most complex of these, discovered in December 2025 near the border town of Narewka, had alarming technical characteristics: a height of 1.5 meters and a total length of 60 meters (50 meters on the Belarusian side and 10 meters on the Polish side), being reinforced with concrete structures [4].

In a single incident, documented in December 2025, approximately 180 migrants (mostly from Afghanistan and Pakistan) used such a tunnel to enter Poland near the town of Narewka in a densely forested area [5]. Most of those who crossed were apprehended immediately after emerging on Polish territory, thanks to seismic and acoustic detection systems that alerted law enforcement.

The investigations, as reported by several publications (*The Telegraph*, *Washington Times*, *EU Today*, *Dailly Express US*, *WP Wiadomosci*), suggest the involvement of specialists recruited from the Middle East, as it was found that they used tactical expertise similar to the underground networks used by terrorist groups [6], and the only groups in the Middle East capable of building such tunnels are: Hamas in the Gaza Strip, Islamic Jihad, Hezbollah in Lebanon, some factions in Kurdistan and, possibly, the Islamic State. This method allows the transit of large groups of people (up to 180 migrants in a single incident), testing the detection capacity of the systems implemented at the external border of the European Union.

In 2024, the Rzeczpospolita newspaper reported on the extradition of a 33-year-old Ahmad Ali from Germany to Poland. The Syrian was the head of a large group involved in the illegal transportation of migrants from Belarus to Europe. According to intelligence services, part of the profits was transferred via cryptocurrencies to terrorist organizations such as Hezbollah and Islamic Jihad.

This tactic, according to the same publications, is considered by Warsaw and the leaders of the European Union as an escalation of the hybrid war orchestrated by the Kremlin with the help of the puppet state Belarus. The goal is to destabilize Europe through migratory pressure, forcing member states to allocate massive resources to secure the borders, which has already happened.

In response to this escalation, Poland and the Baltic states initiated the "East Shield" project in 2024 [7], a massive investment that transforms the border into a digital defense ecosystem. The system is no longer limited to above-ground barriers, but implements state-of-the-art technologies and is considered the largest operation to fortify NATO's eastern flank since 1945.

It is not just a „fence" stretching along 700 km of the Polish border, but an integrated "system-of-systems", where technology plays the main role. To detect underground activities (such as tunneling) and other incursions, Poland is implementing a mix of technologies that work in layers:

1. Advanced Seismic and Acoustic Monitoring. The use of geophones (a device built on the principle of a seismograph, which receives sound waves that propagate in the superficial layers of the earth's crust) and Artificial Intelligence algorithms to distinguish between ambient noise and vibrations specific to excavations. Without them, the massive flow of data from the over 2,500 sensors and thousands of cameras would be impossible

to manage by human operators. The border is therefore equipped with a dense network of buried sensors: microphones and geophones that capture ground vibrations. Digging a tunnel, no matter how silent it may be, generates specific frequencies that are captured by these seismic sensors.

The major challenge, however, is separating natural "noise" (animals, nearby heavy traffic, geological phenomena, etc.) from human activity. This is where AI comes in with filtering algorithms that recognize the sound signature of digging equipment and immediately alert the command center when it detects such an anomaly.

2. Ground Penetrating Radar (GPR) Imaging and Radar Technologies. In addition to sensors, monitoring is also done through active technologies, such as constant scanning of the subsoil to identify density anomalies and artificial cavities. Mobile or fixed detection units can scan the subsoil to identify "voids" or anomalies in soil density. This is the standard technology used to see what is at depth without the need for excavation. Thermal and infrared cameras monitor at the surface, being essential to identify „exits" or logistical movements (transport of excavated soil to the surface, specific equipment, etc.) that are necessary for tunnel construction.

3. Using Artificial Intelligence. However, the most important component is not the sensor itself, but the data analysis center. All data from drones (which constantly patrol), radars, cameras and seismic sensors are sent in real time to regional operational centers. Artificial Intelligence overlays the data. If a seismic sensor detects a vibration and a drone detects unusual movement of people or vehicles in the same area, the system automatically marks the location as a "critical incident", minimizing the reaction time of border guards.

One counter-AI method used by the Belarusian side is to create interference. By causing repetitive noises or simulated movements in different places, they try to "saturate" the algorithm, hoping that it will classify the real infiltration activity as a system error or a natural event [8].

4. Physical Fortifications and Countermobility. The Eastern Shield project is not only based on technology, but also on physical blockade through anti-tank ditches and „dragon's teeth". These are part of the infrastructure that can stop any incursion (whether human or vehicle) through suitable areas of passage, where the probability of being detected by sensors is low.

Although the technology used in projects to secure the European external border is state-of-the-art, the challenge remains the size (hundreds of kilometers of border) and the fact that the tunnels can be dug at varying depths depending on the consistency of the soil. However, through this system, Poland is transforming the border into a „smart" area, where any excavation becomes, from a technical point of view, extremely risky and easy to locate for intervention teams.

The collaboration between Poland and the Baltic states has evolved from simple diplomatic agreements to an integrated military strategy, known as The Baltic Defence Line, which represents a coordinated effort to transform the eastern border of the European Union into an impenetrable barrier. Here are the main pillars of this collaboration:

– Strengthening the defense of the Suwałki Corridor, considered by some analysts to be a critical point, i.e. a vulnerable area for NATO. Poland and Lithuania are working most closely to secure this area, a strip of land of about 100 km located along the border between these EU states and separating the Russian exclave of Kaliningrad from Belarus. Its strategic importance is vital: it is the only land link connecting the Baltic States (Estonia, Latvia, Lithuania) with the rest of NATO allies in Europe;

– Joint planning through which the two countries have signed rapid intervention protocols. In the event of aggression, Polish and Lithuanian forces act as a single unit under NATO command, eliminating bureaucratic delays;

– Constantly conducting simulation military exercises called „Dragon", together with other NATO allies. These exercises test the ability to quickly block Russia's access to Kaliningrad through this corridor.

Estonia, Latvia and Lithuania also agreed in January 2024 to sign a major Regional Security Agreement (Baltic Shield), with accelerated implementation in 2024-2025, through which they committed to building a network of over 600 concrete bunkers along their borders with Russia (excluding Kaliningrad) and Belarus. The design of the bunkers and anti-tank ditches is standardized. This allows the equipment and troops of the states involved, as well as NATO allies, to use the Baltic infrastructure at any time without logistical adaptations. In addition, networks of secure depots (so-called „support parks") have been built that are pre-positioned close to the border to ensure immediate resistance [9].

The Polish model of a „smart border" has also been adopted by the Baltic states. Seismic sensors in Estonia and acoustic detection systems in Poland are connected to a regional command center. If a suspicious sound of digging is detected in Latvia, the information is instantly shared with the entire eastern flank. Furthermore, bridges and border roads are prepared with "mining chambers" (in the form of ready-made niches for explosives) that can be quickly blown up in the event of an invasion.

Recently, according to the European Commission's European Drone Defence Initiative (EDDI) documents, the four countries, together with Norway and Finland, announced the creation of a constant surveillance system with drones. They patrol 24/7, using AI to identify any changes in the ground topography that could indicate a new tunnel or a buildup of troops. The critical moment was the fall of 2025 (especially the repeated incursions of Russian drones into Polish airspace), which demonstrated that traditional defense methods (fighter jets, fixed radars) are ineffective and extremely expensive to intercept swarms of small, cheap and difficult to detect drones.

The system is designed as a layered defense network, not as a continuous physical barrier and contains: Integration of advanced radars, acoustic sensors, infrared cameras and radio frequency detection systems, capable of identifying small objects at low altitudes. use some systems such as MEROPS (tested in Poland and Romania), which use smaller, faster and autonomous interceptor drones to neutralize enemy drones and the use of automated systems designed to process data in real time and provide a reaction time much shorter than that of a human. MEROPS systems (short for Multi-Sensor Electronic Response and Operation Platform System) are an advanced class of platform designed for anti-drone combat (C-UAS - Counter Unmanned Aerial Systems), developed to manage low-altitude threats, specific to border areas or hybrid conflict zones [10].

However, the final decision to neutralize „human in the loop" remains a fundamental safety requirement. The term comes from the English language: human-in-the-loop and represents a fundamental principle of ethics and safety in the use of autonomous systems, artificial intelligence and advanced military technologies. The decision to apply force or to physically neutralize the target is made by a human.

A key element is the integration of the national systems of each participating country into a "common situational awareness picture", based on the risk analysis model, so that the alert received by one of the states is immediately visible to the others. Poland plays the role of an „operational hub" in this digital interoperability system.

Conclusions. The study of the phenomenon of infiltration through tunnels on the

Polish-Belarusian border reveals that we are witnessing a fundamental change in the nature of modern conflicts. We are dealing with a redefinition of the border in the "hybrid era", and from the analysis of the data, some pertinent observations can be drawn.

We can say that the tunnel is no longer a simple escape route for migrants, but has become a precision weapon in the arsenal of hybrid warfare. If the fence is a symbol of political resilience, the tunnel is proof of the adaptability of the aggressor, demonstrating that any static barrier can be circumvented by exploiting the "*third dimension*" – the underground.

This dynamic reveals an asymmetric efficiency ratio: while a third country can mobilize human resources at low cost for the execution of tunnels, the European Union is forced to allocate vast financial resources for the implementation of advanced monitoring systems (seismic sensors, Artificial Intelligence algorithms, etc.). This phenomenon generates a systemic imbalance, forcing defensive structures to internalize high costs to counter rudimentary but effective infiltration methods.

The Polish experience confirms that a secure border in the 21st century is no longer based on the number of troops deployed in the area, but on the capacity to process information. Detection of underground activities is impossible without the fusion of data (seismic, thermal and acoustic) through Artificial Intelligence. This "invisible barrier" is the only viable response to an enemy operating below the threshold of conventional armed conflict. We are witnessing the transformation of border security from the concept of a "fortress" to a "smart shield".

The strategy of aggressive state actors aims, indirectly, to generate economic pressure on the European Union. By forcing member states to allocate significant financial resources for the development and implementation of technologies for detecting and countering underground activities, aggressors can contribute to the erosion of budgetary balances and the amplification of internal political tensions within the community bloc, without resorting to the direct use of classical military force.

In this context, securing the "underground of insecurity" cannot be considered exclusively a national issue of Poland or the Baltic states. Once completed, a cross-border tunnel could become an access point to the entire Schengen area. Therefore, funding research and development of advanced surveillance and intelligent monitoring technologies must constitute a collective priority for the European Union and NATO, going beyond the level of political discourse and becoming a security imperative based on technical capabilities and institutional cooperation.

The case of the tunnels on the EU's eastern border shows us that security can no longer be guaranteed only by classic fortifications (fences, barbed wire). The challenge of the future lies in the ability of Member States to maintain the protection of territorial integrity without sacrificing the humanistic and democratic foundation that defines the European Union. Border security is, in essence, a balancing act between the force necessary for defense and the values that this force must protect.

If democracy loses its own identity in order to survive a crisis, the success of security becomes a defeat of the values that the state was founded to defend. In the near future, the "tunnel war" is likely to expand to the use of underground micro-drones or robotic digging systems, which will require a constant update of detection algorithms. The article emphasizes that, in the face of an adversary „digging" at the foundation of European security, technological vigilance and European strategic unity are the only guarantees of our integrity.

The "underground of insecurity" requires a collective European response, shifting

the emphasis from static physical barriers to dynamic and intelligent surveillance systems, capable of defending the territorial and political integrity of the European Union in the 21st century.

Bibliographical references

1. UN General Assembly Resolution 3314 (14.12.1974). The reference document for defining aggression. Created to help the Security Council identify acts that violate international peace and security.
2. Telegraph (February 2026). Russia and the „Mole War": How tunnels are being used to destabilize NATO's Eastern flank. TVP World / PAP: "Illegal crossing attempts at Poland-Belarus border reach almost 30,000 in 2025" (31.12.2025); Polish Border Guard (2025-2026) - Annual Report on Border Incidents in the Podlaskie Region: Analysis of Underground Infrastructure; Warsaw; Notes from Poland: „Poland says 'specialists from Middle East' digging migrant tunnels under Belarus border" (accessed 16.12.2025).
3. Straż Graniczna – Report on border incidents on the Bug River (accessed 31.12.2025).
4. Telegraph (February 2026). Russia sends migrants into Europe through secret tunnels. Available: https://www.telegraph.co.uk/world-news/2026/02/25/russia-sends-migrants-into-europe-through-secret-tunnels/ (accessed 10.03.2026).
5. Straż Graniczna (strazgraniczna.pl/ December 2025) – Official press releases on interventions in the Podlaskie region.
6. The Telegraph / Belsat.en: "Tunnels under Belarus-Poland border engineered by Middle East experts". (accessed 10.03.2026).
7. Ministry of National Defense of Poland (August 2025). Strategic Document: Tarcza Wschód (Eastern Shield) Project – Technical Specifications and Security Objectives.
8. NATO Emerging Security Challenges Division (2026). Underground Activity Detection Technologies and the Impact of AI in Border Surveillance.
9. Publication website – Digi24. Available: https://www.digi24.ro/stiri/externe/scutul-baltic-cum-isi-construiesc-estonia-letonia-si-lituania-buncare-si-transee-antitanc-la-granita-cu-rusia-si-belarus-3293199 (accessed 27.02.2026).
10. European Drone Defence Initiative. MEROPS Systems: Technical Specifications (European Commission, October 2025).

UDC 343.611(477) **DOI: https://doi.org/10.5281/zenodo.20795636**

PREVENTING INTENTIONAL HOMICIDES UNDER EXTRAORDINARY LEGAL REGIMES: CURRENT STATUS AND TRENDS IN UKRAINE

Maryna MESNIANKINA,
University Lecturer,
Department of Criminal Law Disciplines, Institute of Law and Security,
Odessa State University of Internal Affairs,
Ukraine
ORCID: 0009-0008-0177-6886

Abstract

The article provides a comprehensive analysis of the quantitative and qualitative parameters of intentional homicides in Ukraine under conditions of transformation of the criminogenic situation caused by the implementation of special legal regimes. The study examines the level, dynamics, intensity, structure, and territorial distribution of intentional homicides, as well as the peculiarities of procedural response to these criminal offenses.

It is established that during 2018–2021 there was a steady downward trend in the number of intentional homicides, which changed dramatically starting from 2022 with a sharp increase. A two-phase development model is substantiated: a period of stabilization followed by a multiple and systemic growth of indicators. The analysis of intensity coefficients confirms a significant rise in violent crime rates during the wartime period.

Particular attention is paid to structural changes, including the increase in the share of intentional homicides in the overall structure of crime and crimes against life and health. A significant imbalance between the growth in registered offenses and the decline in the effectiveness of procedural response has been identified, manifested in a reduction in the proportion of notices of suspicion and indictments.

The spatial characteristics of intentional homicides are also revealed, including the formation of high-risk regions under the influence of wartime factors, as well as the identification of typical locations at the micro level, where the residential sector remains dominant.

Keywords: intentional homicide, violent crime, criminogenic situation, crime dynamics, crime intensity, territorial distribution, procedural response.

PREVENIREA OMORURILOR INTENȚIONATE ÎN CADUL REGIMURILOR JURIDICE EXTRAORDINARE: STAREA ACTUALĂ ȘI TENDINȚELE ÎN UCRAINA

Abstract

Articolul oferă o analiză cuprinzătoare a parametrilor cantitativi și calitativi ai omuciderilor intenționate în Ucraina în condițiile transformării situației criminogene, cauzate de implementarea regimurilor juridice speciale. Studiul examinează nivelul, dinamica, intensitatea, structura și distribuția teritorială a omuciderilor intenționate, precum și particularitățile reacției procesuale la aceste infracțiuni.

Se constată că, în perioada 2018–2021, s-a înregistrat o tendință constantă de scădere a numărului de omucideri intenționate, care s-a modificat radical începând cu anul 2022 printr-o creștere bruscă. Este fundamentat un model de dezvoltare în două faze: o perioadă de stabilizare urmată de o creștere multiplă și sistemică a indicatorilor. Analiza coeficienților de intensitate confirmă o majorare semnificativă a nivelului criminalității violente în perioada războiului.

O atenție deosebită este acordată schimbărilor structurale, inclusiv creșterii ponderii omuciderilor intenționate în structura generală a criminalității și a infracțiunilor contra vieții și sănătății. A fost identificat un dezechilibru semnificativ între creșterea numărului de infracțiuni înregistrate și diminuarea eficienței reacției procesuale, manifestat prin reducerea proporției notificărilor de suspiciune și a rechizitoriilor înaintate în instanță.

De asemenea, sunt evidențiate caracteristicile spațiale ale omuciderilor intenționate, inclusiv formarea unor regiuni cu risc ridicat sub influența factorilor de război, precum și identificarea locațiilor tipice la nivel micro, unde sectorul rezidențial rămâne predominant.

Cuvinte-cheie: omucidere intenționată, criminalitate violentă, situație criminogenă, dinamica criminalității, intensitatea criminalității, distribuție teritorială, reacție procesuală.

Introduction. Intentional murders are among the most socially dangerous criminal offenses, as they directly encroach on the highest social value – human life. Their quantitative and qualitative characteristics are important indicators of the state of the criminogenic situation in the state, the level of social tension, as well as the effectiveness of the criminal justice system. The study of these indicators acquires particular significance in the conditions of special legal regimes, when under the influence of military, political and socio-economic factors both the general processes of social development and the mechanisms of law enforcement change.

Criminal offenses against the life of a person pose a direct threat to the security of all spheres of society, negatively affect the state of law and order, demographic processes, socio-cultural development and economic stability of the state, and also significantly increase the level of public anxiety and distrust of government institutions. The current stage is characterized not only by the general increase in the number of such crimes, but also by the complication of their criminological structure: the share of especially serious manifestations of violence is increasing, the practice of using weapons is expanding, the capabilities of modern technologies and technical means are used more often during the preparation or commission of crimes [1, p. 137]. It should be noted separately the strengthening of tendencies towards regional differentiation of crime, the formation of local centers of its concentration, as well as the "relocation" of individual criminal practices between different territories, which indicates the adaptive and transformative nature of modern violent crime.

Such a complication of the criminogenic situation necessitates an in-depth scientific analysis of intentional homicides not only as a separate category of criminal offenses, but as a socially dangerous phenomenon that reflects the general state of public security and the level of the state's ability to respond to the challenges of a special period.

Analysis of statistical data of the Prosecutor General's Office of Ukraine on intentional homicides for the period 2018-2025 allows us to distinguish a clear two-phase model of the development of violent crime. In the pre-war period, from 2018 to 2021, there was a stable trend towards a decrease in the number of registered intentional murders. If we conditionally accept the indicator of 2018, when 5,557 cases were recorded, as the base value of 100%, then in 2019 this indicator decreased to 98.3%, in 2020 – to 68.6%, and in 2021– to 58.1%. Such dynamics indicate a gradual but consistent reduction in violent attacks on life, which indicates the stabilization of the criminogenic situation in the pre-war period and the effectiveness of preventive, law enforcement and socio-legal mechanisms that operated in the state. Overall, over four years, there has been a reduction of over 41% compared to the base year 2018, reflecting a systemic trend towards a decrease in the intensity of violent crime [2; 3; 4; 5; 6, p. 96] (Fig. 1).

Radical changes in the crime situation occurred in 2022. Compared to 2021, when 3,230 cases were registered, the number of intentional murders increased to 22,083, that is, almost 6.8 times. Such a sharp jump indicates the influence of external and internal factors, in particular, the destabilization of the social situation, military actions, and violations of traditional social and legal control mechanisms. The increase in the number

of intentional murders in 2022 has the character of a crisis turning point, when ordinary social and legal regulators do not provide effective containment of violence, and the intensity of conflicts at the social level increases significantly [7; 8; 9; 10] (Fig. 1).

In the following years, the number of intentional homicides continued to increase, but without the characteristic shock jump of 2022. In 2023, 36,667 cases were registered, which is 66% more than in the previous year. In 2024, there was an increase of 42.4% – to 52,197 cases, and in 2025 – by 14% (59,497 cases). Such dynamics indicate the formation of a phase of inertial growth of violent crime: the indicators continue to increase, but the growth rate is gradually decreasing, which may indicate a certain stabilization of the new criminogenic reality caused by military and social factors [7; 8; 9; 10] (Fig. 1).

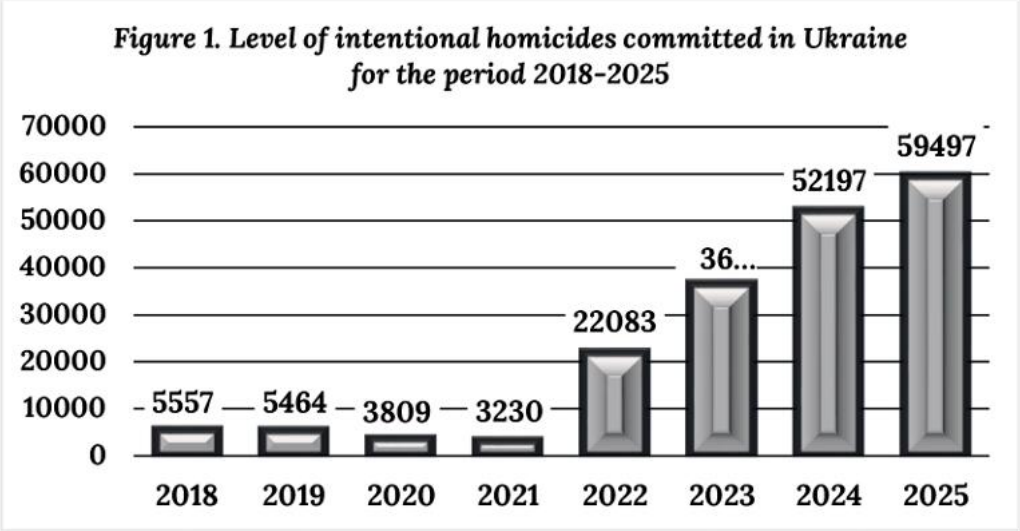


Figure 1. Level of intentional homicides committed in Ukraine for the period 2018-2025

Thus, analyzing the statistics for 2018-2025, we can state the presence of two fundamentally different stages of the development of intentional homicides in Ukraine. The first stage (2018-2021) was characterized by a gradual decrease in the level of violent attacks, reflecting the pre-war stability and effectiveness of the criminal prevention system. The second stage (from 2022) is a sharp, multiple growth, which forms a stable phase of inertial escalation of violence. Such a development model is systemic in nature and requires a differentiated approach to organizing preventive measures, strengthening criminal law response and regional adaptation of security policy, since the growth of violence is manifested unevenly both in terms of territorial and socio-demographic distribution.

The intensity coefficient of intentional homicides (per 100 thousand population) clearly illustrates the sharp transformation of the criminogenic situation in Ukraine. If in 2018 this indicator was 13.1, and by the end of the pre-war period in 2021 it decreased to 7.7, then in 2022 it sharply increased to 53.5. Further dynamics showed a steady growth: in 2023 – 89.4, in 2024 – 128.3, and in 2025 – 147 [2; 7; 8; 9; 10]. Thus, during the period of hostilities, the intensity of intentional homicides increased almost 19 times compared to the minimum pre-war level, which indicates the systemic nature of violent crime and a significant increase in risks to the social security of the population. Such a sharp escalation shows not only a quantitative increase in crime, but also the need to adapt preventive response strategies, strengthen law enforcement mechanisms, and enhance social stabilization in high-risk regions.

Structural indicators of intentional homicides have undergone a radical transformation during the period under study. The share of these crimes in the overall structure of criminal offenses against life and health has increased from approximately 14% in 2018 to almost 70% in 2025, which indicates a significant increase in their criminological significance. In the total mass of all criminal offenses, the share of intentional homicides has increased from about 1% to almost 10%, demonstrating not only quantitative growth, but also a qualitative restructuring of the criminal structure of society [2; 10]. Such dynamics indicate a concentration of the most serious encroachments on life and health, which directly affects social security, the effectiveness of law enforcement activities and the formation of preventive response strategies.

If we consider in detail the internal structure of criminal offenses against life and health in 2025, it is distributed as follows. The leader in prevalence remains intentional murders – 59,497 cases, which is 69.5% of the entire category. In second place in terms of share are intentional bodily harm of minor severity – 15,898 cases (18.5%). Next are beatings and torture – 2,334 cases (2.7%), as well as intentional bodily harm of moderate severity – 2,027 cases (2.4%), combined with cases of domestic violence – 2,030 cases (2.4%). In the last place in terms of prevalence are intentional grievous bodily harm – 1,322 cases (1.5%), while other crimes against life and health make up approximately 3% of the total [10].

Therefore, the dominance of intentional homicides combined with a high level of minor bodily injuries indicates the concentrated criminological danger of these categories and emphasizes the need for a differentiated approach by law enforcement agencies to the prevention and detection of crimes against the life and health of the population.

The internal structure of intentional homicides in Ukraine in 2025 indicates a clear concentration of criminal danger in certain types of crimes. The largest share is made up of murders against two or more people, of which 3,527 cases (6%) were recorded. This type of crime is characterized by high social danger, because several victims suffer in one situation, which complicates the disclosure and increases the resonance of such crimes. Less numerous, but socially significant, are the cases of murders of young children and pregnant women, as well as crimes committed with particular cruelty. Although their number is small, these categories are characterized by a high level of moral and criminal danger and cause significant public resonance [11, p.11]. All other motives and circumstances of murders, including selfish, hooligan, official, contract, or group, occur singly and do not constitute a systemic threat, but their study is also important for a comprehensive understanding of the criminal situation.

Thus, the structure of intentional homicides in 2025 indicates the dominance of group attacks and crimes of high social harm, while other types of crimes are episodic in nature. This configuration emphasizes the need for a differentiated approach by law enforcement agencies, which allows for more effective concentration of resources on the most dangerous categories of crimes and the development of targeted preventive measures.

At the same time, the indicators of procedural response have the opposite dynamics. If in the pre-war period, reports of suspicion accounted for 24-38% of registered cases, then after 2022 their share decreased to 5%, and in 2025 to 1.5%. The share of indictments accordingly decreased from 15-24% to 1% [7; 10]. Such a gap between the scale of the growth of violent crimes and the capabilities of criminal justice indicates a systemic imbalance, which has several consequences. First, the limited procedural response reduces the preventive effectiveness of law enforcement agencies, creating conditions

for further escalation of the criminogenic situation. Second, the disproportion in law enforcement increases social anxiety, undermines citizens' trust in government institutions, and reduces the public legitimacy of the justice system. Third, the presence of significant regional inequality in procedural activity forms "territories of increased risk", where the lack of an effective response can contribute to the concentration of violence and complicate control over the criminogenic situation [12, p.126].

The highest level of intensity of reports of suspicion is concentrated in relatively safe regions, where the law enforcement system retains the ability to actively respond to procedural issues. In particular, the leading positions are occupied by Zakarpattia (19%), Vinnytsia (18%), Volyn (15%) and Zhytomyr (14%) regions. Rivne (13%), Kropyvnytskyi (11.7%), Cherkasy (11.5%), Lviv (11.4%), Poltava (10.6%) and Kyiv (10.1%) regions, which indicates a relatively stable level of procedural activity in these territories [10].

The group of regions with an average level of procedural activity is formed by Mykolaiv (9.8%), Ternopil (9.3%), Khmelnytskyi (8%), Odesa (6.3%), Kyiv city (5.1%), Chernihiv (5%) and Chernivtsi (4.1%) regions. In Dnipropetrovsk region, this indicator is somewhat lower and amounts to 4%, which may reflect an increased burden on the law enforcement system [10].

At the same time, in regions that directly border the combat zone or are under constant security pressure, a critical decrease in the share of reports of suspicion is recorded. The lowest values are characteristic of Sumy (0.5%), Zaporizhia (0.7%), Kharkiv (1.4%) and Kherson (2.1%) regions, which indicates a significant limitation of the possibilities of effective pre-trial investigation [10].

A similar pattern is observed in the referral of indictments to court. The highest level of this procedural stage was recorded in Zakarpattia (12.8%), Vinnytsia (12.6%), Zhytomyr (9.6%), Volyn (8.8%) and Rivne (8%) regions. At the same time, moderate indicators are characteristic of Lviv (7.7%), Poltava (7.5%), Kropyvnytskyi (6.8%), Kyiv (6.1%), Mykolaiv (5.9%) and Khmelnytskyi (5.8%) regions [10].

In contrast, in the frontline territories, there is an almost critical drop in the level of judicial referral of criminal proceedings: in Zaporizhia region it is only 0.2%, in Sumy region – 0.3%, in Kharkiv region – 1%, in Kherson region – 1.3%. This situation reflects the objective difficulties of the functioning of the justice system under military stress [10].

Thus, the regional analysis demonstrates a clearly expressed asymmetry of the criminal procedural response, which was formed under martial law. While the rear regions retain relative stability and the ability to ensure the proper level of investigation, the front-line regions are faced with a significant narrowing of procedural opportunities. This leads to the formation of territorial zones of increased procedural risk and complicates the implementation of the principle of the inevitability of criminal liability for intentional murder.

The geography of intentional homicides in Ukraine during the period of special legal regimes is characterized by clear territorial polarization. The most criminogenically tense situation is observed in regions that are in the zone of active hostilities or are under constant security pressure. In 2025, the leading positions in the number of registered intentional homicides were occupied by Kharkiv (6624), Sumy (6426) and Zaporizhia (5054) regions. A significant indicator was also recorded in Dnipropetrovsk region (3125). The combination of these regions forms a conditional "zone of increased risk", where the factors of militarization of space, population displacement, destruction of infrastructure and weakening of traditional social ties are combined. Areas with significant but less concentrated criminal activity include Kherson Oblast (1073) and Kyiv City (1049). In these cases,

both military and urbanization determinants of violent crime are combined. The group of regions with relatively moderate intensity is formed by Odesa (826), Chernihiv (747), Kyiv (446), Zhytomyr (354), Mykolaiv (305), Chernivtsi (300), Lviv (297), Kropyvnytskyi (281), Poltava (254), Cherkasy (250), Khmelnytskyi (224) and Vinnytsia (206) regions. These territories are characterized by the absence of a systemic peak load, although individual local foci of criminogenic tension are still recorded. The lowest rates were found in relatively rear western regions – Volyn (137), Ternopil (118), Zakarpattia (109), Ivano-Frankivsk (107) regions. In Rivne region, the number of cases was about 150 [10]. These territories demonstrate a relative stability of the criminogenic situation, which is explained by the remoteness from the active zone of hostilities and lower industrial concentration.

Along with macro-regional analysis, the study of the spatial localization of crimes at the micro-level is of fundamental importance [13, p.102-103]. This involves establishing typical locations for intentional homicides, which allows for the identification of situational patterns of violent behavior. The dominant environment for the implementation of intentional attacks on life remains the residential sector. Most such crimes occur in apartments and private houses. This indicates the prevalence of interpersonal conflicts that arise in a closed space between individuals connected by family or long-term social ties. Public space is the second most common. Streets, courtyards and other open locations become places for situational conflicts, which are often impulsive in nature. A specific segment of places where intentional murders are committed is also formed by entertainment infrastructure facilities. – cafes, bars, nightclubs and other leisure establishments. Although the frequency of such crimes in these locations is relatively low compared to the residential sector or open public spaces, it is here that there is an increased conflict-generating potential [13; 14, p.46; 19; 20; 21; 22; 23; 24].

Analysis of seasonal variability in intentional homicides in 2025 demonstrates a distinct uneven distribution of criminal activity throughout the calendar year. The generalization of monthly statistical data allowed us to systematize them by season and determine the contribution of each season to the overall crime structure.

At the beginning of the year, an increased level of violent attacks is recorded: in January, 5,891 cases were registered (9.9% of the annual volume), which indicates one of the local maxima. In February, a significant decline is observed to 3,772 cases (6.3%), after which in March there is a slight increase to 3,852 (6.5%). With the onset of spring, activity gradually increases: in April, 4,943 cases (8.3%) were recorded, in May – 4,839 (8.1%). In June, a certain decrease is noted to 4,641 (7.8%), but already in July the highest monthly figure is reached – 6,001 cases (10.1%). In August, the level remains stably high – 5,447 (9.2%), after which in September there is a decline to 4,536 (7.6%). In the autumn period, there is a rise again: in October – 5209 (8.8%), in November – 4859 (8.2%), and in December the figure increases to 5507 cases (9.3%) [10].

The generalized seasonal distribution shows that in winter (December–February) 15,170 intentional murders were recorded, which is about 25.5% of the annual volume. The spring period (March-May) is characterized by 13,634 cases (22.9%). The highest level of criminal activity falls on summer (June-August) – 16,089 cases (27%), which forms a seasonal peak. In autumn (September-November) 14,604 cases (24.6%) were registered.

Thus, the seasonal dynamics have a wave-like character with a clearly pronounced maximum in the summer months and a relative decrease in the spring period. The revealed pattern can be explained by the influence of seasonal criminogenic factors, in particular, the intensification of social interaction in the warm season, the increase in the intensity of interpersonal contacts and, as a result, the increase in the likelihood of conflicts

that can escalate into violent actions.

The conditions of operation of special legal regimes affect the distribution of intentional homicides by day of the week. Taking into account the calendar ratio of working (5) and weekend (2) days, working days account for about 68% of the possible time intervals for committing crimes, and weekends – approximately 32%. This statistical advantage is due to the greater number of working days, but criminological analysis should take into account not only the calendar structure, but also the level of social activity and the nature of interpersonal contacts on different days of the week [16, p.49].

Analysis of the time of commission of intentional murders allows to reveal patterns of concentration of crimes during the day and their connection with social activity of the population. In the morning period (06:00-12:00) about 10-12% of cases, mostly of a domestic nature, occur in private premises and are associated with situational conflicts. The daytime period (12:00-18:00) covers 15-18% of crimes; at this time the share of murders in public spaces increases - on the streets, in transport, in workplaces - due to more active social contacts. The highest peak falls on the evening (18:00-00:00) 35-40%, when crimes often occur in public places, catering and entertainment establishments, often under the influence of alcohol and emotional escalation. At night (00:00-06:00) 30-35% of cases are recorded, mostly in the private sector, on the streets and transport hubs, where sudden conflicts, reduced social control and limited presence of witnesses create favorable conditions for the commission of a crime. In general, the evening-night period is critical for violent activity, which justifies the need to concentrate preventive measures at this time [17, p.8].

The methods of committing intentional murders remain a key element of their criminological characteristics, as they reflect the mechanism of implementation of criminal intent, the level of preparation of the criminal and the degree of social danger. The most common are murders using cold weapons – knives and other piercing-cutting objects. Such crimes are mostly of a domestic or situational-conflict nature, are committed without careful preparation and are often associated with alcohol intoxication. A significant proportion are intentional murders using firearms, the availability of which during wartime increases the risk of this particular method increasing. Such crimes are often characterized by high social danger and preliminary planning. Other methods, such as inflicting multiple bodily injuries, strangulation or mechanical impact, are characterized by high emotional tension and a close personal connection between the perpetrator and the victim. Isolated cases include the use of explosive devices or arson, which require advanced training and are aimed at covering up the crime or creating public resonance. [15, p.49; 18, p.864].

Thus, the analysis of the methods and timing of committing intentional murders under special legal regimes shows a combination of traditional domestic conflict mechanisms with new risks caused by the militarization of the social environment and increased aggressiveness of the population.

Conclusions. In conclusion, we note that the analysis of intentional homicides in Ukraine for the period 2018-2025 indicates a fundamentally two-phase development of violent crime: pre-war stability and a gradual decrease in the level of crimes (2018 - 2021) were replaced by a sudden, multiple increase in the war period (from 2022), which formed a stable phase of inertial escalation. A significant increase in the intensity and severity of crimes, their concentration in front-line regions, uneven procedural response, as well as seasonal and daily patterns emphasize a deep security crisis that goes beyond the boundaries of a criminological problem and has a systemic social character.

Along with traditional domestic conflict motives, the role of new risks is growing, caused by the militarization of the social environment, the spread of modern technologies, and the availability of weapons, which increases the social danger of these crimes. This indicates the need for a comprehensive approach to preventive policy, differentiated response by law enforcement agencies, and strengthening regional security.

Therefore, intentional homicides under special legal regimes are not only a critical indicator of the criminal threat, but also a key indicator of social instability, which requires a systematic, strategic, and scientifically sound approach to protecting the population and ensuring the effectiveness of criminal justice.

Bibliographical references

1. Stukalina Olha. Intentional murders in Ukraine: comparative analysis of quantitative and qualitative indicators. In: Bulletin of the Odessa Research Institute of Forensic Expertise. Issue 18. 2025, p.136-145.
2. Unified Report on Criminal Offenses for January-December 2018. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 17.03.2026).
3. Unified Report on Criminal Offenses for January-December 2019. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 12.03.2026).
4. Unified Report on Criminal Offenses for January-December 2020. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 19.03.2026).
5. Unified Report on Criminal Offenses for January-December 2021. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 19.03.2026).
6. Chekan Nataliia. Prevention of violent crimes committed by marginal groups in Ukraine: dissertation for the degree of Doctor of Philosophy in specialty 081 “Law”. National Academy of Internal Affairs, Kyiv, 2024. 238 p.
7. Unified report on criminal offenses for January-December 2022. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 15.03.2026).
8. Unified report on criminal offenses for January-December 2023. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 16.03.2026).
9. Unified report on criminal offenses for January-December 2024. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (access: 17.03.2026).
10. Unified report on criminal offenses for January-December 2025. Office of the Prosecutor General of Ukraine. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2

(access: 18.03.2026).
11. Kushnirenko Ryslan. Criminological characteristics and prevention of intentional attacks on human life: dissertation ... candidate of legal sciences in specialty 12.00.08. Dnipropetrovsk State University of Internal Affairs, Dnipro, 2023, 169 p.
12. Police jurisdiction under martial law: Monograph / under the general editorship of Dmytro Shvets, Mykola Semenyshyn. Odesa: Publishing House "Helvetica", 2022, 552 p.
13. Stukalina Olha. Criminological characteristics and prevention of terrorist acts in large cities of Ukraine. Dissertation. Doctor of Philosophy 081 "Law". Odesa State University of Internal Affairs, Odesa, 2023, 286 p.
14. Court verdicts on the fact of committing a criminal offense provided for in Article 115 of the Criminal Code of Ukraine. Unified register of court decisions. Available: https://reyestr.court.gov.ua (access: 12.01.2026).
15. Methodology of investigation of intentional murder committed in a state of severe mental excitement: Monograph / A. I. Kuntiy. Lviv: Lviv State Police Department, 2016, 220 p.
16. Samoilova Olena. Criminological characteristics, determination and prevention of intentional murders and intentional grievous bodily harm injuries committed by elderly persons: PhD in specialty 12.00.08 (081 Law). Research Institute for the Study of Crime Problems named after Academician V. V. Stashys of the National Academy of Legal Sciences of Ukraine, Kharkiv, 2018, 233 p.
17. Yurchenko Olha. The role of victim behavior of victims in the commission of serious violent crimes against the life and health of a person in Ukraine: Author's abstract of dissertation. PhD of legal sciences: special 12.00.08. Yaroslav the Wise National Law Academy of Ukraine. Kharkiv, 2004. 18 p.
18. Yaremchuk Roman. Forensic classification of intentional murders committed with the use of firearms under martial law. In: Bulletin of the Criminological Association of Ukraine, 2024, No.2 (32), p.852-866.
19. Babenko Andriy. Crime Prevention in the Regions of Ukraine: Conceptual, Methodological and Praxeological Dimensions: Monograph. Odesa: OSUIA, 2014. 416p.
20. Babenko Abdruy. Analysis and prevention of criminal offenses committed by armed youth organized groups. In: South Ukrainian Legal Journal. No.1-2, 2022, p.54-59.
21. Babenko Andriy. Prevention of organized, armed and terrorist crime as a component of security in the context of European integration. In: South Ukrainian Law Journal, 2022, No.4. Part 1, p.54-58.
22. Babenko Andriy. Current status and trends of drug crime, murders and suicides in cities and rural areas of Ukraine: criminological measurement and prevention. In: Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs: Scientific Journal. Special Issue No.1 (91) "Combating drug crime in Ukraine and in the world: problems and ways to solve them", 2018, p.16-26.
23. Babenko Andriy. Tactical-psychological, criminal-procedural, administrative-legal and operational-search measures for the prevention and deterrence of criminal offenses. In: South Ukrainian Law Journal, 2021, No.1, p.14-22.
24. Zarubei Victoriia, Komarynska Yuliia, Babenko Andriy, Sukhomlin Yuliia, Kononenko Nataliia. Obtaining the testimony of a minor during the pre-trial investigation under the laws of Ukraine. In: Cuestiones Politicas. Vol. 39 (70), 2021, p.368-384 (Web of Science). Available: https://produccioncientificaluz.org/index.php/cuestiones/article/view/36855.

CZU 343.85:351.74 DOI: https://doi.org/10.5281/zenodo.20795731

TACTICAL AND LEGAL CHALLENGES IN "SKY ECC" AND "ENCROCHAT" TYPE MISSIONS: THE IMPACT OF COMMUNICATIONS DECRYPTION ON DRUG TRAFFICKING CASES IN ROMANIA

George ȚICAL,
PhD, University Professor,
Dean, Faculty of Psychology, Behavioral Sciences and Law,
"Andrei Șaguna" University, Constanta, Romania,
Associate Member, Romanian Academy of Scientists,
Full Member, Academy of National Security Sciences,
ORCID: 0000-0002-6123-6821

Abstract

This scientific paper analyzes the fundamental paradigm shifts in the architecture of European security, caused by the collapse of the "digital fortresses" EncroChat and Sky ECC. In a 21st century defined by technological convergence, cross-border organized crime groups have adopted military-grade encryption as their main tool for evading the law, generating a false sense of invulnerability. The paper explores how Romanian law enforcement authorities, in close coordination with partners through Europol and Eurojust channels, managed to transform the "data flood" resulting from decryptions into an unprecedented evidentiary asset.

From a tactical perspective, the investigation focuses on the complex process of "humanizing bits", namely on the methodologies for assigning digital identity by corroborating metadata with operational reality on the ground. The need for a "cognitive re-equipment" of investigative officers, who must operate today at the intersection of Big Data analysis and traditional police tactics, is analyzed.

From a legal perspective, the paper addresses the procedural "carnage" in Romanian courts, where the validity of evidence obtained through the European Investigation Order (EIO) is tested under the pressure of exceptions regarding the loyalty of the administration of evidence and jurisdictional sovereignty. The impact of the CJEU case law on the admissibility of such data is analyzed, highlighting the risk of "digital impunity" in the absence of a harmonized legislative framework. In conclusion, the paper proposes a proactive vision of "21st century police", where the success of missions depends on the capacity of the judiciary to integrate technological innovation without sacrificing the fundamental guarantees of the rule of law.

Keywords: Sky ECC/EncroChat, E-evidence, cross-border organized crime, European investigation order, digital attribution, evidence loyalty, ognitive retooling.

PROVOCĂRI TACTICE ȘI JURIDICE ÎN MISIUNILE DE TIP "SKY ECC" ȘI „ENCROCHAT": IMPACTUL DECRIPTĂRII COMUNICAȚIILOR ASUPRA CAZUISTICII DE TRAFIC DE DROGURI DIN ROMÂNIA

Abstract

Prezenta comunicare științifică analizează mutațiile fundamentale de paradigmă în arhitectura securității europene, provocate de prăbușirea „fortărețelor digitale" EncroChat și Sky ECC. Într-un secol XXI definit de convergența tehnologică, grupările de criminalitate organizată transfrontalieră au adoptat criptarea de nivel militar ca principal instrument de eludare a legii, generând o falsă senzație de invulnerabilitate. Lucrarea explorează modul în care autoritățile de aplicare a legii din România, în strânsă coordonare cu partenerii prin canalele Europol și Eurojust, au reușit să transforme „potopul de date" rezultat din decriptări într-un activ probatoriu fără precedent.

Sub aspect tactic, investigația se concentrează pe procesul complex de „umanizare a biților", respectiv pe metodologiile de atribuire a identității digitale prin coroborarea metadatelor cu realitatea operativă din teren.

Este analizată necesitatea unei „reechipări cognitive" a ofițerilor de investigații, care trebuie să opereze astăzi la intersecția dintre analiza Big Data și tactica polițienească tradițională.

Din perspectivă juridică, lucrarea abordează „măcelul" procedural din instanțele românești, unde validitatea probelor obținute prin Ordinul European de Anchetă (OEA) este testată sub presiunea excepțiilor privind loialitatea administrării probelor și suveranitatea jurisdicțională. Se analizează impactul jurisprudenței CJUE asupra admisibilității acestor date, subliniind riscul unei „impunități digitale" în absența unui cadru legislativ armonizat. În concluzie, lucrarea propune o viziune proactivă asupra „poliției secolului XXI", unde succesul misiunilor depinde de capacitatea sistemului judiciar de a integra inovația tehnologică fără a sacrifica garanțiile fundamentale ale statului de drept.

Cuvinte-cheie: Sky ECC/EncroChat, probe electronice, criminalitate organizată transfrontalieră, ordin european de anchetă (OEA), atribuire digitală, loialitatea probei, reechipare cognitivă.

Introduction. When "fortresses" become aquariums. The research theme starts from the obvious reality of recent years: communication has become increasingly digital, and organized crime groups have started to use increasingly sophisticated encryption systems to hide their activity. In this context, operations such as Sky ECC and EncroChat have radically changed the way in which authorities understand and investigate these networks, giving them access to an impressive volume of data that until recently seemed inaccessible, especially in drug trafficking cases. At the same time, this evolution has gone hand in hand with the intensification of judicial cooperation at European level, but also with the increasingly clear need to adapt legislation and judicial practice to new technological realities.

In this context, the present research aims to analyze how the decryption of these communications influences both the efficiency of investigations and the admissibility of evidence in drug trafficking cases in Romania. The main interest is directed towards the concrete difficulties generated by the management of very large volumes of digital data, but also towards the legal uncertainties that arise when this data is used as evidence, especially in relation to the requirements of a fair trial.

The analysis is based on the idea that access to communications previously considered impossible to penetrate represents a major advantage in combating organized crime, as it allows for the detailed reconstruction of criminal activity. At the same time, it starts from the premise that the lack of clear and uniform rules regarding the use of this evidence, especially in a cross-border context, can create real difficulties regarding its admissibility before the courts.

In this sense, the research aims to highlight both the tactical and legal implications of the use of data obtained by decrypting encrypted communications in drug trafficking cases in Romania. It also analyzes the concrete way in which information from the Sky ECC and EncroChat platforms is integrated into the investigation activity, as well as the way in which the existing legal framework responds to the challenges raised by these types of evidence.

Methods and materials applied. The research is based on an interdisciplinary approach, located at the intersection of criminal law, criminology and the analysis of phenomena generated by the digitalization of investigations, having a predominantly qualitative character. The approach is based on the documentary analysis of the specialized literature, the European and national regulatory framework, as well as relevant documents in the field, complemented by the legal analysis of the norms and jurisprudential guidelines regarding electronic evidence. At the same time, elements of comparative analysis and case study are utilized, by reporting on the Sky ECC and EncroChat operations, in order to highlight the tactical and legal implications of using these data in the criminal process.

In order to render the reality on the ground as faithfully as possible, the language used integrates, in places, elements of police slang. This stylistic option does not affect the scientific rigor of the approach, but contributes to the authentic illustration of the operative mechanisms and the professional culture specific to the analyzed environment, while facilitating the concrete understanding of the described phenomena.

Let's face it, because we don't have time to waste on euphemisms: for a long time, the smart guys in big crime lived with the warm and fuzzy feeling of *digital invisibility*. They thought they were immutable, hidden behind toys worth thousands of euros that guaranteed them that no structure, no matter how well-equipped, would ever read their "*recipes*" for success. We're talking about EncroChat or Sky ECC, which weren't just miserable chat apps for expensive phones, but true virtual fortresses. A kind of bit-by-bit *safe houses*, where Balkan routes were cut, prices per kilogram were negotiated and sentences were handed down with unbelievable audacity. Honestly? They were convinced they were untouchable.

But, surprise. Trouble in their encrypted paradise. When these code walls collapsed, we found ourselves with a mountain of data. A deluge, nothing more. Romania, located right at the "*high gate*" of Europe in the security area, had to learn on the fly how to process this mammoth evidence without stumbling into procedural "bumps". Basically, the way in which DIICOT and DCCO officers now manage drug trafficking cases has changed radically. We are no longer talking about classic "stories" from the trail or "*arrows*" caught on the street corner. We are talking about massive data flows that give you the entire network architecture.

This is what the specialized literature already calls a new type of systemic protection, because, as mentioned in The Invisible Shield, modern public safety depends on our ability to transform "*raw data into information shields capable of anticipating the adversary's movements*" [1, p. 17]. Basically, we have gone from hunting people to hunting bits.

It is a new paradigm. A brutally direct one. It is no longer just about catching the criminal, but about the police's ability to adapt to "*new challenges in a world where classic missions collide head-on with digital reality*" [3, p. 112].

Today we are not talking about dusty theory. We are talking about how we have managed to break the myth of their invulnerability and, above all, about the legal thresholds that we keep bumping into in court when we bring this "exotic" evidence to the table. In this context, "*the integration of Big Data analysis in the fight against crime is no longer a technological luxury, but a strategic necessity for institutional survival*" [2, p. 38].

It is a game of technological checkmate. And the stakes are huge: either we learn to speak the language of this data, or we remain with binoculars in hand while the networks rebrand before our eyes.

Anatomy of the operations: how the Hexagon servers ended up in our indictments. Let's be realistic: what happened with EncroChat and Sky ECC was not a simple "*interception*" of a dozen, but a veritable magnitude 9 earthquake in the communications infrastructure of organized crime. We are not talking about a surveillance warrant placed on a miserable cartel phone number, but a total technical immersion in servers located in French and Dutch jurisdiction. In essence, the authorities there "*injected*" a code that turned their "*secure*" phones into the most effective wiretapping microphones in history. It was, if you will, a digital Trojan horse of epic proportions, a show of force that confirms Europol's vision that "*organised crime groups are exploiting cutting-edge technologies to secure their communications, forcing law enforcement agencies to adopt innovative solutions to access data*" [7, p. 42].

But how does this data end up on the desk of a DCCO officer in Bucharest? This is where the magic of the European Investigation Order (EIO) comes in. No more dead times, no more piles of files tied with string that circulate at snail's pace through ministries within the framework of classic letters rogatory. Now we are talking about a direct flow, a kind of judicial fast-track through Eurojust. However, here comes the first tactical "*bug*": we receive the data, but we receive it in the form of massive, raw digital packages, often without an instruction manual. This is exactly what the European Commission has emphasized in its communications on security: "*access to electronic evidence is essential in around 85% of criminal investigations, but their complexity requires unprecedented cross-border cooperation*" [4, p. 2].

It is not as if you listen to a magnetic tape and conscientiously write down what "Don" X says to "Arrow" Y. This is *Big Data* in its purest and most aggressive form. You get millions of lines of code, encrypted messages, pictures of "cargo" freshly unloaded at the port of Constanta and GPS locations thrown together in a file that seems indecipherable at first glance. Thus, "*the ability to extract actionable intelligence from heterogeneous databases is now the front line in national security, where algorithms must overcome human limitations in processing massive information flows*" [2, p. 42]. Without serious analysis software and without officers who know how to "*read*" between the bits, you are like a blind man holding a map written in Braille, but who has never learned the alphabet.

And there is something else that costs money and time. Let us not forget that these international operations have pushed the limits of police cooperation as we have known it for decades. In the paper Police in the 21st century: current missions and changing challenges, presented in Vienna, it is clearly discussed that "*cross-border missions are no longer limited to joint patrols or post-factum information exchange, but to the fusion of data streams in real time, creating a hybrid investigative space*" [3, p. 114]. That is, when a "*city boy*" from Romania sent a picture of a stack of euros to a partner in Rotterdam via Sky ECC, we saw the picture almost at the same time as the recipient. This simultaneity has changed the rules of the game: we have moved from retrospective investigation (what happened?) to predictive investigation (what is going to happen?).

But wait, this is where the legal "*clunk*" that gives us the biggest headaches in courtrooms comes in: the loyalty of the evidence. How do we prove to a panel of judges that the data package that left a server in France is identical, bit by bit, to the one that ended up in the file at the Bucharest Court? If we don't have a solid and indisputable digital chain of custody, the luxury lawyers, paid with big money from traffic fees, are just waiting to destroy all our months of work on the grounds of data manipulation or lack of technical transparency. It is a minefield where, as stated in The Invisible Shield: The Science Behind Public Safety, "*the invisible shield of technology must be doubled by surgical procedural rigor, otherwise innovation becomes vulnerable to the rigors of the rule of law*" [1, p. 21]. This concern is also reflected in the monitoring reports of the EU Council, which emphasize the need for "*common standards for the admission of digital evidence obtained through special investigative techniques*" to avoid invalidating complex cases.

Moreover, operating with this data involves close collaboration between organized crime units and *digital forensics experts*. You can no longer work "*in isolation*". According to recent studies in the Annals Series on Military Sciences, "*the convergence of cyber-intelligence and classical criminal investigation requires a cognitive re-equipment of personnel, who must master both field tactics and the subtleties of complex data analysis*" [2, p. 48]. In Romania, this meant the creation of analysis cells where the case officer sits shoulder to shoulder with the IT specialist to piece together the puzzle, while respecting the Euro-

pean Directive on data protection for judicial purposes (Directive 2016/680). An often ignored but crucial aspect is that of assigning digital identity. In the Sky ECC environment, no one logs in with the name on the bulletin board, true. We were dealing with "*handles*" like *Shadow99* or *The King*. Our tactical work was to "*humanize*" these IDs. How? Through *cross-platform* corroboration. If Shadow99 was boasting about a new car, we had to find that car in real traffic in Bucharest, using LPR (License Plate Recognition) systems. If he sent a picture of a barbecue in the yard, we had to identify the location through OSINT (Open Source Intelligence) analysis. This "*digital ant work*" is what turns a simple chat into evidence that sends someone behind bars for 15 years. **Europol** calls this process *Targeting the Top*, emphasizing that decrypting messages is only the first step, the real victory being linking the fingerprint to the individual through traditional corroborated evidence.

In conclusion, the anatomy of these operations shows us that the future of security no longer lies only in "*muscle*", but in the ability to navigate this digital ocean. We had the data. We had the technology from external partners. But now we are in the process of polishing the legislation and internal procedures so that this "*digital flood*" does not unnecessarily spill into the court archives, but produces definitive convictions. The stakes? It's simple: to show them that, no matter how expensive their encrypted phone is, the law enforcement branch now has a digital "*upgrade*" that can no longer be ignored.

Tactical Challenges: From Anonymous ID to Real Handcuffs. Here is the operational "*slaughter*". If in the first phase we were happy like children that we had the data, in the second we realized that we had in our arms a ball of digital threads so tangled that it would have taken us three lifetimes to untangle it manually. Why? Because no self-respecting trafficker would put his ID picture as his avatar or sign himself "*Popescu Ion, high-risk dealer*".

Let's get to the "*heart of the problem*", where the bits hit the metal bars of the cell and where the months of work of the DCCO officers turns into hard years of prison, or, if we make a mistake, into a beautiful ranking.

The first tactical situation that had to be solved was when the "*Pandora's box*" called Sky ECC was opened, which was the assignment. You find yourself in front of your monitor with a handle like "*DarkKnight_RO*" or "*ElPadrino_Bucuresti*" who discusses with disarming ease about "*20 pieces of white*" that need to end up in a mall parking lot in Sector 3. Who is the character behind the avatar? This is where what we call in operational jargon "*humanization of bits*" comes into play. In the Romanian police environment, we quickly learned that a mountain of bits is not worth a penny if you can't tightly link them to a CNP (Personal Numeric Code), a person, and a physical address. As masterfully emphasized in The Invisible Shield: The Science Behind Public Safety, "*the science of modern public safety no longer resides in the brute force of intervention, but in the fine ability to map the volatile digital footprint over the often brutal physical reality of the suspect*" [1, p. 19].

How was this feat achieved? Through corroborations that would make even the most experienced old-fashioned detective sweat through his shirt. If DarkKnight sent a picture of a barbecue in the yard of an "*anonymous*" villa to the chat group, the analysis officers would immediately enter Google Earth, check the shapes of the roofs, the angle of the shadows and the surrounding vegetation until they found the exact location. If he boasted of a limited edition watch worth 50 thousand euros, we would immediately scan the social media pages of the suspect's entourage until we found the same bracelet sparkling on someone's wrist in a club in Mamaia. This is exactly the process described at the Vienna Conference: "*the 21st century police no longer only hunt individuals in the flesh, but process complex patterns of digital life to materialize the physical presence of the criminal*

in the judicial space" [3, p. 115].

The second big challenge, which gave logistical nightmares, was *the industrial volume of data*. Manually processing hundreds of thousands of messages, thousands of photos and audio files in a timely manner, before the "*goods*" leave the warehouse or the money is laundered through eight tax havens, is simply extreme sport. Here, the "*modern scientific method*" written about in the Annals Series on Military Sciences (2025) has practically become our new operational bible. We were forced to resort to Machine Learning algorithms to filter keywords and generate real-time connection graphs. You no longer have the luxury of reading the entire stream of cancans between traffickers; you have the machine tell you who communicates with whom most often, who gives the orders and who is the vital "*node*" of the network that needs to be cut first. According to the study Artificial intelligence and big data analysis, "*the fusion of the cold logic of the algorithm and the tactical intuition, the field "smell" of the case officer, represents the only real barrier to the metastatic expansion of cross-border criminal networks*" [2, p. 45].

And let's not forget the famous *cryptolanguage*. No one is so naive as to write "cocaine" or "*heroin*" in a chat, even an encrypted one. They use a hybrid slang, a digital bird language where the goods are "*snow*", "*t-shirts*", "*girls*", "*spare parts*" or "*paint*". Our tactics had to make a giant leap to decrypt not only the bits, but also the hidden meaning of this jargon that changes faster than iOS updates. Europol, in its strategic reports, sharply warned that "*the linguistic and tactical adaptability of organized crime groups represents the most effective countermeasure against automated surveillance systems, making human expertise in interpreting the cultural and criminal context indispensable*" [7, p. 95].

But the great tactical victory of the Romanian system in recent years has been its *operational simultaneity*. Thanks to access to this data through the secure channels of Europol and Eurojust, it was possible to carry out "*mirror*" raids with partners in Spain, the Netherlands or Germany. By the time the "*goods*" were unloaded in a clandestine warehouse in Ilfov, the police were already at the gate, because we had read the message with the exact location while the leader of the network was typing it relaxedly from a beach in Dubai. It is that technological "*checkmate*" that I mentioned in the introduction. However, the risk is proportionate: a single second of inattention, a leak of information or a misinterpretation of a metaphorical context in a message and all the surveillance work of months can be lost, leaving us with an empty file.

This is where the role of the European Commission comes in, which, through its recent directives on cybersecurity and electronic evidence, puts enormous pressure on us to maintain a fine balance. "*Technology is an incredible force multiplier, but it remains a sterile tool if it is not backed by a procedural rigor that guarantees that the truth extracted from the bits is identical to the legal truth recognized by the court*" [5, p. 12].

Basically, we have witnessed a professional mutation: the transition from the classic police officer, "*with the sole of his shoe worn out in the neighborhood*", to the police analyst, a hybrid who must master the Criminal Procedure Code to perfection, but also have notions of Python, metadata analysis and a lot, a lot of criminal psychology applied in the virtual environment. In Romania, our elite units, such as DCCO, have understood that "*cognitive retooling*" is not just a conference slogan, but a matter of professional life and death.

The ultimate tactical challenge, however, remains *the integrity of the digital chain of custody*. When you handcuff a drug kingpin based on messages extracted from a server in France, you have to be prepared to answer a thousand technical questions: How was the copy made? Who had access to it? Was any bit altered during the transfer through

the OAS? As stated in the Annals Series on Military Sciences, "*modern security is no longer played out only on the street, but also in the cloud, where state sovereignty is tested by encryption protocols and multiple jurisdictions*" [2, p. 50].

In conclusion, we have managed to break the mirror in which they admired themselves as intangible. But the tactical battle is far from being won definitively. Criminals are already migrating to other, even more obscure and sophisticated platforms. And those on the front lines must be ready to start all over again, with the same resources, but with a much more technologically "*reequipped*" mind. The stakes? Let's not let the "*invisible shield*" of the law becomes a mere decoration on the wall of an outdated institution.

Legal challenges: the courtroom carnage. Let's move on to the "*barrage of fire*", where bits turn into years of prison or resounding acquittals. If at Operative we managed to "*humanize*" the bits, in front of the court we hit a much higher wall – *admissibility*. Here, the fight is no longer fought with masked men and battering rams, but with commas, procedures and international treaties. Let's not fool ourselves: the top lawyers for the traffickers no longer dispute the fact that their client wrote those compromising messages. That would be ridiculous. They attack the "kitchen" through which those messages reached the Romanian judge's table.

The first and hardest legal battle is fought over *the concept of loyalty in the administration of evidence*. Lawyers are jumping up and down: "*Judge, how do we know that the server in France has not been manipulated? Where is the interception warrant issued by a Romanian judge for this Romanian citizen, on Romanian territory?*" It is a dilemma of digital sovereignty that gives chills to the judicial system. At this point, we must call on the "*heavy artillery*" of European cooperation. As the European Commission points out, "*electronic evidence has a volatile and cross-border volatile nature, which makes classic mutual legal assistance often ineffective, requiring direct mutual recognition mechanisms, such as the European Investigation Order*" [4, p. 3]. But wait, the battle is just beginning. In Romania, we are bumping into the "*elephant in the room*": the decisions of the Constitutional Court regarding interceptions and their legality. Lawyers frequently invoke the fact that the evidence from Sky ECC or EncroChat is, in fact, "*state hacking*". They claim that the French authorities hacked an IT system without respecting the procedural guarantees of the Romanian Code of Criminal Procedure. Here, we come up with the counter-argument offered by Europol and Eurojust, which clearly state that these operations were carried out under the jurisdiction and authorization of the magistrates of the states where the servers were located (France and the Netherlands). The principle is simple, but difficult for the defense to "*swallow*": if the evidence was legally obtained in the issuing state, it is admissible in the executing state (Romania), according to the principle of mutual recognition that underlies the single European judicial area.

However, our courts are cautious. And they have reason to be. As mentioned in The Invisible Shield: The Science Behind Public Safety, "*the technological shield of public safety cannot operate in a legal vacuum; it must be doubled by a procedural transparency that ensures that the right to a fair trial is not sacrificed on the altar of technological efficiency*" [1, p. 23]. In other words, it is not enough to have evidence; you must demonstrate that the digital chain of custody is intact. Any suspicion that the data was altered during transfer through Europol servers or when downloaded to DIICOT databases can lead to the exclusion of evidence. It is an "*all or nothing*" game.

Another major legal challenge is *the right to confrontation*. How can a defendant challenge the digital "*witness*"? In the case of an undercover witness, you can hear him (even with a distorted voice). But how do you "*hear*" a decryption algorithm or metadata

analysis software? This issue of the technological "*black box*" is intensely debated in Police in the 21st century: current missions and changing challenges, where it is shown that "*the major challenge of modern justice is to translate the technical complexity of cyber-interception into an intelligible legal language that allows the real exercise of the right of defense*" [3, p. 116].

Moreover, we are faced with the interpretation of the decisions of the Court of Justice of the European Union (CJEU). Recently, in famous cases, the CJEU began to set strict limits on the generalized and undifferentiated storage of traffic data. Lawyers immediately take advantage: "*This data was collected "in bulk", targeting thousands of users, not just my client. It is illegal mass surveillance!*". We must demonstrate that the interception targeted a specific criminal infrastructure (EncroChat being practically a service dedicated to criminals), not the general population. This is exactly what the study Artificial intelligence and big data analysis in crime prevention and combat supports: "*the difference between illegal surveillance and elite investigation lies in the proportionality of the measure and the specificity of the digital target*" [2, p. 49].

In Romania, the battle is also fought over *technical expertise*. Often, judges request computer forensic expertise to confirm that the extracted messages are real. But who does the expertise? Our specialists from the specialized laboratory. The lawyers say: "*Well, wait, the laboratory is still at the Police/Romanian Intelligence Service, it's not independent!*" And so we enter a spiral of appeals that can block a file for years. Here, "*cognitive retooling*" must also be applied to magistrates. The 21st century judge must understand what a hash is, how end-to-end encryption works, and why a digital copy is as "*original*" as the source. Without this legal-technical literacy, we risk throwing the best evidence in the trash due to a simple misunderstanding of the phenomenon.

The stakes are indeed huge. If this evidence falls en masse, organized crime receives a "*free pass*" in the digital space. As Europol warned in its reports, "*failure to ensure a sustainable legal framework for electronic evidence will lead to a dangerous digital impunity, where criminal groups will always be one step ahead of the law*" [5, p. 7].

In conclusion, the legal challenges in Romania on the Sky ECC/EncroChat files are the ultimate stress test for our justice system. It's not just about "*catching the thieves*", but about how we adapt fundamental concepts of law (born in the age of paper and eyewitness testimony) to the brutal reality of servers thousands of miles away and billions of encrypted messages. We must be surgeons of the law, operating with precision, because any procedural error means a "*shark*" back at large, richer and more convinced than ever that his technology is, indeed, an invisible shield.

Conclusions and perspectives. The future is no longer written with ink, but with bits. We have reached the finish line of this analysis, but in the field, the battle is only now heating up. Let's draw the curtain on this complex landscape and see what we are left with (...in our pockets) after the digital "*storm*" caused by Sky ECC and EncroChat.

Let's be realistic: the era in which the "*bad guys*" slept peacefully on encrypted down pillows is more or less over. But make no mistake, organized crime is not sitting around crying for servers in France. They are rebranding, migrating to new and more obscure platforms, to even deeper "*darknets*". However, the lesson learned by us, those in the public order and national security system in Romania, is a vital one.

The first big conclusion? *International cooperation is no longer a diplomatic "fad", but our operational oxygen*. Without Europol, Eurojust and the European Investigation Order, we would be left looking at blocked phones like expensive bricks. As the European Commission points out, "*in an interconnected world, the security of a Member State depends*

directly on the speed with which electronic evidence circulates between jurisdictions" [5, p. 15]. Romania has shown that it can play in the big leagues, but we must maintain this digital "*guerrilla*" agility.

The second conclusion, perhaps the hardest for us, is the need for a *total cognitive retooling*. It is no longer enough to have "*muscle*" and know how to put on the handcuffs. The DCCO police officer or the DIICOT prosecutor of the 21st century must be half data analyst, half field tactician. According to the study Artificial intelligence and big data analysis, "*the fusion of the cold logic of the algorithm and the tactical intuition of the officer is the only real barrier to the expansion of criminal networks*" [2, p. 45]. If we do not invest heavily in training, we risk having state-of-the-art machines but not knowing how to get them out of the parking lot.

From a legal perspective, the "*carnage*" in the courtrooms has shown us that we need a *clearer legislative framework*. We cannot leave the admissibility of billions of euros of evidence to the mercy of dusty procedural interpretations, conceived in the era of the typewriter. We must clearly define in the Code of Criminal Procedure the status of this data extracted from external servers. As stated in The Invisible Shield, "*the technological shield of public safety remains a mere museum piece if it is not doubled by a procedural rigor that ensures that digital truth is also legal truth recognized by the court*" [1, p. 25].

And what comes next? The prospects are challenging. We are heading towards an era of *Predictive Policing*. We no longer want to just catch traffickers after the goods have hit the streets; we want to be there when the first order is typed. But be careful! In the pursuit of efficiency, we must not fall into the other extreme. "*21st Century police missions must navigate the thin line between necessary surveillance and respect for fundamental rights, in a fragile democratic balance*" [3, p. 117].

Ultimately, *the stakes of this game of technological* "*checkmate*" *are the very safety of our communities*. We have managed to break their myth of invulnerability, but the fight continues. We must remain curious, remain technical and, above all, remain united under the same "*umbrella*" of European security.

Bibliographical references

1. Țical George. The invisible shield: the science behind public safety. In: Annals Series on Military Sciences, Volume 17, No.4/2025, Romanian Academy of Scientists (AOSR). ISSN Print 2066-7086, DOI: 10.56082/annalsarscimilit.2025.4.15, p. 15-25.
2. Țical George. Artificial intelligence and big data analysis in crime prevention and combat. In: Annals Series on Military Sciences, Volume 17, No.1/2025, Romanian Academy of Scientists (AOSR). ISSN 2066-7086, DOI: 10.56082/annalsarscimilit.2025.1.36, p. 36-51.
3. Țical George. Police in the 21st Century: current missions and changing challenges. In: Conference Proceedings, The 10th International Scientific Conference "Modern Scientific Method", (June 12-13, 2025), Vienna, Austria. ISBN 978-2-5983-1651-0, DOI: 10.5281/zenodo.15671209, p. 111-117.
4. European Commission. Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for Electronic Evidence in Criminal Matters, COM/2018/225 final.
5. European Commission. Communication on the EU Security Union Strategy 2020-2025, Brussels, 2020.
6. Council of the European Union. Council Conclusions on Internal Security and European Police Partnership, Brussels, 2020.

7. Europol, European Union Serious and Organised Crime Threat Assessment (SOCTA) – A Corrupting Influence: The Infiltration and Undermining of Europe's Economy and Society by Organized Crime. Publications Office of the European Union, Luxembourg, 2021.
8. Europol – The Other Side of the Coin: Analysis of Financial Investigations in the EU. Haga, 2023.
9. Eurojust – Report on Eurojust's Casework in the Field of Cybercrime, Haga, 2024.
10. Romanian Criminal Procedure Code (Law No.135/2010), as subsequently amended and supplemented (sections on special methods of surveillance and international judicial cooperation).
11. Directive (EU) 2016/680 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of the prevention, detection, investigation or prosecution of criminal offences.
12. Court of Justice of the European Union (CJEU) – Case law in related cases on the retention of and access to traffic and location data (Ex: Cauza C-623/17, Privacy International și cauzele C-511/18, C-512/18 și C-520/18, La Quadrature du Net și alții).

CZU: 304 **DOI: https://doi.org/10.5281/zenodo.20795823**

MODERN METHODOLOGICAL APPROACHES TO ANTICIPATING CRIMINAL PHENOMENA

Iulia BULEA,
PhD, University Assistant,
Faculty of Law,
"Lucian Blaga" University of Sibiu, Romania
ORCID: 0009-0006-7723-9169

Cătălin NICOLESCU,
PhD, Lecturer, Faculty of Law,
"Lucian Blaga" University of Sibiu, Romania
ORCID: 0009-0000-5596-4366

Abstract
Modern methodological approaches to anticipating criminal phenomena rely on prospective studies, trend analysis, and early-warning mechanisms to understand and forecast developments in security and crime. These methods integrate scenario analysis, risk indicator assessment, and studies on conflict dynamics, offering a comprehensive perspective on possible future developments. In security studies, such approaches are essential for the early identification of crises and for supporting strategic decision-making under conditions of uncertainty. In Romania, these tools are applied within analysis and early warning centres, where trends are monitored and scenarios are developed for possible evolutions in crime and conflict, enabling rapid and adaptive responses from authorities, as well as the development of preventive public policies aimed at reducing vulnerabilities and strengthening regional and international security in the long term. These methodological approaches contribute to the consolidation of a culture of foresight, support interdisciplinary research, and provide a useful framework for developing innovative crime prevention strategies in the context of current global challenges and for enhancing a more robust and sustainable international security environment.
Keywords: prospective studies, algorithms, anticipation, risk factors, criminality.

ABORDĂRI METODOLOGICE MODERNE ÎN ANTICIPAREA FENOMENELOR INFRACȚIONALE

Abstract
Abordările metodologice moderne în anticiparea fenomenelor infracționale se bazează pe utilizarea studiilor prospective, a analizei de tendințe și a mecanismelor de avertizare timpurie, pentru a înțelege și a anticipa evoluțiile din domeniul securității și criminalității. Aceste metode integrează analiza de scenarii, evaluarea indicatorilor de risc și studiile privind dinamica conflictelor, oferind o perspectivă complexă asupra posibilelor evoluții viitoare. În contextul studiilor de securitate, aceste abordări sunt esențiale pentru identificarea timpurie a crizelor și pentru fundamentarea deciziilor strategice în situații de incertitudine. În România, astfel de instrumente sunt aplicate în cadrul centrelor de analiză și avertizare timpurie, unde sunt monitorizate tendințele și sunt elaborate scenarii pentru posibile evoluții ale criminalității și conflictelor, facilitând reacții rapide și adaptate ale autorităților, dar și dezvoltarea unor politici publice preventive, orientate spre reducerea vulnerabilităților și consolidarea securității regionale și internaționale pe termen lung. Aceste abordări metodologice contribuie la consolidarea unei culturi a anticipării, sprijină cercetarea interdisciplinară și oferă un cadru util pentru dezvoltarea de strategii inovatoare de prevenire a criminalității în situația provocărilor actuale globale și pentru o securitate internațională sporită și durabilă.
Cuvinte-cheie: studii prospective, algoritmi, anticipare, factori de risc, criminalitate.

Introduction. Prospective studies – scientific investigations utilising preliminary analysis techniques to examine possible future scenarios – are among the most innovative methods of modern research. This preventive approach transforms the social paradigm from one primarily focused on confronting crisis situations to one more centred on anticipating them. It essentially represents a future-oriented time perspective. The main advantages of prospective studies, compared to retrospective ones, lie in reducing selection errors (biases) and preparing for vulnerability situations, characterised by two defining elements: adaptation to them and even the possibility of influencing their evolution. Predictive mechanisms guide decision-makers in developing strategies to manage vulnerability situations.

Adapting to risks entails establishing proactive measures after identifying and evaluating predictions, scenarios, forecasts, and early warning operations. Decisions are no longer based solely on the past and present. Thanks to prospective studies, which are grounded in rigorous simulations of the future, responses to threats are informed [1, pp. 43-46].

Regarding the capacity to influence the dynamics of crisis situations, the following question arises: Can future developments be steered by current actions? Can advantageous alternatives be favoured? Can unfavourable outcomes be avoided? Can certain exposures be eliminated? In this context, prospective studies become the most attractive tool for countering global instability [2, p. 32]. They assist both in understanding perspectives and in creating the conditions necessary for things to happen differently – safer, more sustainable, and more efficient. Preventing antisocial acts transforms from a defensive concept into an active tool for optimising the future.

There is no doubt that developing prospective studies requires working with a series of well-defined, thoroughly grounded concepts and methodologies [2, p. 32] to generate accurate, functional forecasts for coherent, valid, and justified decision-making. Among these are qualitative analysis (which can capture cultural and social nuances influencing human behaviour and encourage the development of effective community intervention strategies) and quantitative analysis (through which forecasts and statistics can be generated and future trends established) [3, pp. 102-104]. Combining these methods ensures a comprehensive and detailed perspective on the factors affecting public safety.

Real innovation is not merely the analysis of behaviours or phenomena over time, but how the information obtained transforms into a mechanism capable of adapting to and actively influencing the observed reality. Compared to the classic linear model, which involves collecting data, analysing it, and publishing results, the progressive model is circular and dynamic, based on continual iterations and adjustments. In fact, risk is no longer treated as a fixed function but rather as an active, evolving process that depends on interactions among various factors. Thus, we are talking about complex phenomena monitored through modern systemic methods, adapted and valuable in their role as decision-making support.

This study aims to answer the question: to what extent do modern predictive methods effectively contribute to optimising public safety decisions, considering their methodological and ethical limits?

Methods and materials applied. This scientific article falls within the category of theoretical research, based on an in-depth analysis of specialised literature and relevant concepts to anticipate criminal phenomena. The paper adopts a theoretical-analytical approach, focusing on interpreting, correlating, and critically evaluating the specialised literature to outline a coherent perspective on the predictive mechanisms used in public

security. Critical analysis played an essential role, examining the main contributions from the fields of criminology, prospective studies, and prevention-oriented analyses. This method allowed not only the synthesis of established viewpoints but also the highlighting of the limitations and challenges associated with new paradigms, particularly regarding the use of data-driven tools and probabilistic models. The endeavour sought to strike a balance between presenting the advantages of these approaches and emphasising the risks of their uncritical application.

Logical analysis was also a central element of the research, facilitating the organisation of ideas and the construction of explanatory relationships between the concepts used. By relating to risk factors and facilitating conditions, probabilistic connections were highlighted, avoiding deterministic interpretations. This manner of structuring the argumentation clarified how certain variables could influence the occurrence of criminal behaviours without rendering them absolute causes.

To systematise the content more effectively, classification was also utilised to order information according to criteria relevant to the analysed field, delineating categories of factors involved in the dynamics of the criminal phenomenon, as well as the main types of methodological approaches identified in the specialised literature. This organisation contributed to enhancing the clarity of the exposition and facilitating the following of the argumentative thread.

Regarding the materials used, the research is based solely on documentary sources, specifically scientific works, specialised studies, and relevant bibliographic references. Additionally, a conceptual analysis was conducted of various tools and techniques for crime anticipation, such as forecasting, scenario planning, and predictive models, without directly applying them to concrete data. References to these tools served an illustrative and explanatory role, contributing to an understanding of their use in practice. By combining these methods, the study offers an integrated approach to the theme under examination, emphasising conceptual rigour and argumentative coherence. The undertaken endeavour aims to highlight the main directions of evolution in anticipating criminal phenomena while maintaining a clear boundary between theoretical analysis and potential practical applications.

The paper's contribution lies in the critical integration of predictive models with ethical and institutional dimensions, proposing a balanced perspective on the use of algorithms in crime prevention. Complementing the theoretical-analytical endeavour, the research highlights the need to integrate future empirical approaches that test predictive models in concrete institutional contexts. Such a direction would allow for comparative evaluations of the performance of various analytical tools, as well as the validation of their relevance concerning the specificities of national public order and public safety systems.

Discussions and results obtained. **1. *Forecasting as a Tool for Grounding Managerial Decisions***. Identifying trends, risks, and strategies to counter vulnerabilities, and quantifying security impacts are the prerogative of management structures. The responsibility of the leadership system is materialised in the obligation of decision-makers to undertake concrete measures aimed at protecting and strengthening the organisation's interests, but also concerns social commitment, meaning the collective well-being of society. Planning, as a function of the managerial process, entails an overall vision that must also account for various strategic forecasts [4, pp. 135-137]. It is worth mentioning here that forecasts – tools for knowledge and diachronic investigation – extract and interpret development trends and trajectories of processes, states of affairs, or events [5, pp. 53-57].

By using forecasts, decision-makers evaluate future directions regarding qualitative

and quantitative components specific to the activity domain. As a coherent set of analytical approaches through which managers integrate existing dynamics, identify regularities, and formulate anticipations regarding the phenomena and processes likely to manifest within a determined time horizon. Generally, projections cover several years and are approximate, serving as a foundation for establishing strategic objectives and guiding institutional-level decisions. These studies require articulating a well-defined methodological framework in which statistical analysis, predictive modelling, scenario techniques, and historical trend evaluations are used in concert to construct credible representations of the evolution of criminality. Such an approach involves leveraging longitudinal data series, socio-economic indicators, and institutional variables that correlate with risk factors identified in the specialised literature to formulate hypotheses about criminal dynamics.

Anticipating criminal phenomena has evolved from simple intuitions to a discipline based on probabilistic determinism. Simply put, while the future cannot be predicted with mathematical certainty, it is known that crime does not appear out of nowhere; rather, it follows certain complex causal patterns. To decipher these mechanisms, analysis is no longer limited to descriptive statistics; instead, advanced instruments such as multivariate regression models, Bayesian networks, which allow updating probabilities when new data emerge, machine learning algorithms, and simulations are used to analyse the relationship between multiple independent variables and one or more outcomes. These technologies help to see beyond raw numbers and understand how criminal behaviour propagates within social dynamics.

An essential element of modern research is the development of alternative scenarios. The question arises: what would happen if certain variables were to change? This analysis examines how modifications to the legislative framework, economic fluctuations, or technological advancements could influence patterns of criminality. This method allows decision-makers to test the system's effectiveness before an actual crisis occurs, identifying vulnerabilities that require proactive intervention. For these projections to be genuinely credible, a rigorous methodology for triangulating data is necessary, meaning a strategy for information validation. Official police statistics are necessary but are often supplemented by victimisation surveys, qualitative studies, and open-source intelligence analyses. This diversified approach provides a much more faithful image of reality on the ground. Simultaneously, predictive models undergo continuous calibration to verify that results remain stable and precise under varying social conditions.

Anticipation is a decisional phenomenon, not merely an analytical one. Beyond the theoretical component, the goal is pragmatic – optimising public policies and resources. In a world where institutions have limited logistical resources, predictive analysis indicates the areas or social groups at high risk of victimisation [6, pp. 172-174]. Thus, preventive strategies can be grounded in empirical evidence rather than assumptions.

2. Data-Based Anticipation Models and Their Impact on Institutional Decision-Making. In preventing risk situations, prospective studies are fundamental. They allow the identification of vulnerability factors and are sine qua non tools for developing prophylactic strategies. A significant advantage of these studies is that, in the digital age, they operate on vast data flows, paving the way for predictive prevention through algorithms that can detect threats and identify much more effective solutions than traditional analysis. It is crucial to mention that operational formulas must be explainable and auditable. Algorithms cannot be used without a solid ethical framework.

The use of algorithmic systems and massive data volumes has radically changed how social reality is understood and managed. Currently, information no longer circu-

lates freely; rather, it is filtered by digital infrastructures that priorities data according to often invisible logics for the ordinary user. This change brings significant advantages in knowledge accumulation but also creates new areas of uncertainty, especially where access to data is unequal or where interpretive models reach their limits. Decisions based on Big Data generate intense debates in contemporary discourse. On the one hand, these technologies are appreciated for their efficiency in identifying repetitive patterns and formulating precise predictions. On the other hand, there is a real risk of adopting and amplifying existing human errors or biases within society [7, p. 180].

In this context, recent research highlights the phenomenon of algorithmic bias, in which predictive models can reproduce or even amplify existing structural inequalities in society. Empirical analyses have demonstrated that certain risk assessment systems used in criminal justice can yield discriminatory results based on indirect socio-demographic variables [8]. These findings underscore the necessity for rigorous validation and audit mechanisms, as well as constant human oversight in the decision-making process [9].

In international literature, the development of the concept of predictive policing reflects an increasingly pronounced orientation toward utilizing statistical models and algorithms to anticipate crime [10]. These systems use historical data and contextual variables to estimate the probability of criminal offences occurring in specific areas or time periods, thereby optimising resource allocation within institutions. Studies conducted in this field highlight both the efficiency of these tools in reducing certain types of criminality and their limitations, particularly regarding dependence on data quality and the risk of perpetuating existing inequalities [11, pp. 85–90].

Regarding forecasting criminality, there is a noticeable shift from classical forecasting methods to much more complex probabilistic models. Anticipation is no longer limited to the simple extension of past trends; it now involves machine learning techniques capable of capturing invisible relationships among economic, demographic, and social behaviour. These approaches enable the construction of much more robust evolutionary scenarios, based on a combination of quantitative data and contextual analyses. However, the performance of these models depends entirely on the quality of the information input into the system: incomplete data or measurement errors can lead to distorted conclusions that, once translated into administrative decisions, can have significant consequences [12, pp. 17-19]. For this reason, the continuous calibration and verification of models are essential to maintaining the credibility of prospective analyses.

A major challenge is the tendency of institutions to shift part of the decision-making responsibility onto algorithms. Although applications that estimate the risk of recidivism or the probability of committing offences provide valuable analytical support, they raise serious transparency issues and require rigorous controls over automatically generated decisions to ensure accountability in decision-making.

Methodologically, modern crime research requires interdisciplinary effort. Sociology, criminology, psychology, and data science jointly contribute to understanding the multiple causes of antisocial acts. This correlation of perspectives provides a much stronger basis for public policies, enabling the adoption of informed and strategic measures. The development of digital technologies has also opened new avenues for information collection, including through the analysis of online environments, these sources providing relevant insights into social interactions and preferences in real-time. However, their use in prospective studies demands heightened attention to personal data protection, as the line between useful analysis and intrusive surveillance becomes increasingly difficult to delineate. In practice, these modern methods enable a shift from delayed reactions to a

preventive strategy grounded in clear evidence. The early identification of new operational methods or criminal tendencies aids in optimising resources and swiftly adjusting interventions.

Openness to information and communication technology forms the foundation for the proper functioning of the current social framework [13, p. 145]. However, technologies meant to protect us can simultaneously become sources of vulnerability at both the individual and community levels. The digitisation process, especially through massive data volumes and artificial intelligence, has profoundly transformed the very meaning of knowledge, how it is used, and access to it [7, p. 202]. Using algorithms to anticipate human behaviour necessitates profound reflection on the balance between security and freedom. In the absence of clear regulations, technology can undermine fundamental rights. Therefore, integrating predictive analysis into studies of criminality must be accompanied by a high degree of ethical responsibility, ensuring that the effectiveness of interventions does not contravene the principles of the rule of law.

3. Scientific Grounding of Institutional Intervention. Grounding the decision-making process on empirical evidence marks a departure from administrative models based on intuition or the simple reproduction of institutional routines that no longer correspond to contemporary social realities. This approach transforms public safety management into a precise activity, in which every adopted measure must be based on rigorous data analysis and a deep understanding of the mechanisms that generate criminality. In an age of complexity, an institution's success depends on its ability to process vast amounts of information to identify vulnerabilities that superficial analyses might overlook.

The efficiency of this model is reflected, first and foremost, in how resources are managed [5, pp. 58-59], considering that the workforce and allocated budgets are always limited relative to the scale of antisocial phenomena. Instead of distributing staff uniformly and often inefficiently across the entire area of competence, managers can now focus their efforts on areas where risk models indicate a higher probability of incidents. This specialisation of intervention enables a strategic presence in the field, where preventive actions are calibrated to the specifics of each area or exposed social group. The result is an optimisation of operational costs and an increase in the state's relevance in addressing citizens' needs.

In addition to logistical aspects, evidence-based architecture introduces a rigorous performance evaluation system that obligates institutions to maintain constant professional integrity. Any implemented strategy is subject to real-time monitoring to verify whether theoretical projections are confirmed in practice. When figures indicate a discrepancy between proposed objectives and obtained results, the managerial system has a duty to intervene promptly to adjust the working parameters. This dynamic of continuous learning eliminates the risk of investing time and resources in outdated methods, instead providing the opportunity to multiply tactics that lead to a real reduction in victimisation rates.

Integrating scientific research into the decision-making process also provides a safeguard against subjective errors and biases that can distort human judgment. When a decision is supported by logical arguments and demonstrated correlations between socio-economic factors and criminal behaviours, the degree of error significantly decreases. This methodological rigour provides the necessary support for sustainable public policies that can withstand the test of time and produce profound transformations in the community's safety structure.

We emphasise the importance of legitimacy that the use of data brings in the pub-

lic space. Transparency regarding how administrative decisions are made, explained through objective analyses, contributes to rebuilding the trust bond between citizens and the authority. In a democratic environment, the state's power to intervene preventively must always be justified by clear evidence demonstrating the utility and necessity of each measure. Thus, public safety evolves toward a stage of professional maturity, where data science and ethical responsibility unite to protect both social order and individual fundamental rights.

4. Explanatory Models and Analytical Tools in Criminality Anticipation. Surveying the specialised literature, there is a transition from traditional explanatory models, centred on retrospective analysis, to thinking frameworks oriented toward prediction and prevention. Thus, classical criminology theories, based on the relationship between the individual and the social environment [14, pp. 71-73], are now complemented by interdisciplinary approaches that integrate statistical tools, digital technologies, and algorithmic models. This paradigm shift reflects methodological evolution and adaptation to the increasing complexity of criminal phenomena.

Conceptually, anticipating criminality involves identifying patterns in the manifestation of antisocial behaviours and correlating them with a series of determining factors that can be grouped into several relevant categories: individual factors (behavioural predispositions or personal history), social factors (family environment, level of social integration, group influence), and contextual factors (spatial characteristics or situational opportunities). Such a classification allows for both a nuanced understanding of the phenomenon and the structuring of analytical models capable of capturing the interdependencies among the variable elements.

Methodologically, modern approaches to anticipation stand out for their use of various tools that go beyond descriptive analysis. Data-based predictive models leverage large volumes of information to identify iterative schemes and estimate the probability of criminal offences occurring under specific conditions. These are complemented by behavioural analysis techniques aimed at identifying early indicators of deviance and by spatio-temporal models that enable the mapping of criminal risk.

Compared to traditional approaches, these methods offer several clear advantages, including the ability to handle a larger number of variables and the ability to generate prospective scenarios. However, they are not without limitations. Dependence on data quality, the risk of algorithmic bias, and the difficulty of integrating qualitative dimensions of human behaviour pose major challenges that warrant critical evaluation of the generated results. Comparative analysis of different models is very important to avoid overestimating predictive capacity and to maintain a balance between rigour and interpretive caution. Furthermore, anticipation mechanisms can be understood in terms of the causal relationships between risk factors and criminal manifestations. It can thus be observed that certain conditions, such as social marginalisation or negative peer influences, do not directly cause the commission of a criminal act but rather increase the likelihood of its occurrence [15, pp. 23-25]. Therefore, anticipation does not operate with certainties but rather with probabilistic estimates based on observable correlations and trends. This perspective aids in formulating coherent explanatory chains where the triggering factors are correlated with facilitating situations and potential behavioural outcomes.

From an applied perspective, integrating these methodological approaches yields more effective prevention strategies [16, p. 451]. By identifying risk areas and vulnerable categories, responsible institutions can intervene more effectively, optimising resource allocation and reducing the incidence of criminal activity. Additionally, the use of pre-

dictive models necessitates clear ethical and legal frameworks governing the collection, processing, and utilisation of information.

From a legal standpoint, the use of predictive tools in public safety must be analysed in light of European standards on data protection and fundamental rights. The General Data Protection Regulation (GDPR) and the case law of the Court of Justice of the European Union impose clear limits on the automated processing of data and decision-making based solely on algorithms [17, pp. 17-19]. Consequently, any crime anticipation system must respect the principles of proportionality, transparency, and accountability to avoid unjustified intrusions into privacy and other fundamental rights [18, pp. 17-19].

Conclusions. The evolution of contemporary society, marked by accelerated digitisation, increased mobility, and diversification of social risks, necessitates a reconsideration of the procedures through which the criminal phenomenon is understood and managed. Prospective studies are mechanisms capable of identifying favourable conditions and potential trajectories of deviant behaviour in advance. They are increasingly used in decision-making processes for crime prevention and resource management, providing additional benchmarks by organising and interpreting large volumes of data into an operationally usable form. These tools are utilised within broader decision-making mechanisms, where the final interpretation remains essential for directing interventions.

Anticipating criminal phenomena results from a gradual rapprochement between two analytical approaches that have evolved separately: on the one hand, classical explanations from criminology, focused on understanding the causes of crime, and on the other hand, recent approaches oriented towards identifying patterns and trends in the phenomenon. This merging results in a shift in perspective, placing emphasis on both explaining events that have already occurred and on how they can be understood in terms of probability and development over time; predictions are, in fact, an extension of criminological understanding rather than a break from it. The criminal phenomenon is undoubtedly a dynamic process that changes in response to numerous factors acting simultaneously and interdependently. Instead of simple causality, a complex structure of influences emerges, in which individual, social, and contextual elements overlap and mutually enhance one another [19, p. 239].

Risk factors can be better understood when grouped into three main levels: individual, social, and contextual. The individual level addresses personal characteristics and specific behaviours, the social level encompasses relational and group influences, and the contextual level reflects the economic, institutional, and environmental conditions under which social activity occurs. The importance of this framework lies in how these levels interact to create favourable or unfavourable conditions for the manifestation of criminal behaviour.

Finally, it is pertinent to note that data-driven predictive models impose a series of constraints, primarily related to the quality of the information used and its interpretation. The results obtained depend directly on the consistency of the input data, and any imbalances or errors can significantly affect the conclusions. For this reason, employing these models necessitates constant reference to critical analysis and human validation, ensuring that the results are understood in their real context and not treated as absolute truths. Yet complex decisions always entail estimating what is to come. Most solutions, whether significant or minor, are predictions about the future.

From a practical perspective, the results of the analysis support the need to strengthen the institutional framework by systematically integrating predictive tools into public safety decision-making, accompanied by the development of clear mechanisms for au-

diting and controlling the algorithms used. Furthermore, it is essential to develop public policies to standardise data use and increase decision-making transparency, to mitigate risks associated with algorithmic bias and promote the critical use of predictive models. At the same time, investments in interdisciplinary professional training for personnel at responsible institutions are vital to effectively capitalising on these tools.

Regarding future research directions, there is a clear need to develop empirical studies to test the effectiveness of predictive models in concrete institutional contexts, as well as to explore the impact of using artificial intelligence on fundamental rights in the process of anticipating and preventing criminality.

Therefore, the contribution of this study lies in highlighting the necessity for an integrated approach that combines the analytical rigour of predictive models with the ethical and legal demands specific to the rule of law. Anticipating criminal phenomena cannot be reduced to a mere technological issue; it must be understood as a complex process at the intersection of data, decision-making, and institutional responsibility. This perspective opens new avenues for research aimed at evaluating the real impact of these tools on the efficiency of public policies and the protection of fundamental rights.

Bibliographical references

1. Chifu I. Reconfiguring Security and International Relations in the 21st Century. Vol. II: Threats and Conflicts in the 21st Century. Prospective Studies and Alternative Methodologies. The Security Framework in the 21st Century. Bucharest: RAO, 2022.
2. Chifu I. Reconfiguring Security and International Relations in the 21st Century. Vol. III: Prospective Studies and Alternative Methodologies. The Security Framework in the 21st Century. Bucharest: RAO, 2022.
3. Dobrin L., Hulpuș I.-A. The Role of Quantitative and Qualitative Methods in the Performance of Organizations in the Field of Public Order and Safety. In: Current Trends in the Public Order and Safety System, Vol. II, Sibiu: Techno Media, 2025.
4. Cune C. The Role of Strategic Planning in Public Service Management. In: Studies and Research in Administrative Sciences, Vol. I, Sibiu: Techno Media, 2022.
5. Voicu C., Prună Ș. Police Management. Bucharest: MediaUno, 2004.
6. Deleanu G.-T. Risks and Threats to Public Order. In: Studies and Research in Administrative Sciences, Vol. V, Sibiu: Techno Media, 2024.
7. Rughiniș R. The Digital Society: Masters, Citizens, or Slaves? Bucharest: Humanitas, 2022.
8. Perry W.L., et al. Predictive Policing: The Role of Crime Forecasting in Law Enforcement. Santa Monica: RAND Corporation, 2013.
9. Ferguson A.G. The Rise of Big Data Policing: Surveillance, Race and the Future of Law Enforcement. New York: NYU Press, 2017.
10. Angwin J., et al. Machine Bias. In: ProPublica, 2016. https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing (accessed 20.04.2026).
11. Barocas S., Hardt M., Narayanan A. Fairness and Machine Learning. 2019. Available: https://fairmlbook.org (accessed 20.04.2026).
12. Vasiu A.-N. Computerization of Public Institutions. In: Studies and Research in Administrative Sciences, Vol. III. Sibiu: Techno Media, 2023.
13. Dragomir A. Public Order in the European Union. Sibiu: "Lucian Blaga" University, 2020.
14. Badea-Butoi T. (ed.). Victim - Victimology - Victimization: Addressing the Victim-Of-

fender Pair from Socio-Psychological, Medical-Legal and Legal Perspectives. Bucharest: Pro Universitaria, 2023.
15. Zimbardo P.G., Leippe M.R. The Psychology of Social Influence and Attitude Change. Bucharest: Trei, 2022.
16. Georgescu Ș.-J., Breindea S.-G. Dimensions of Public Safety in Contemporary Society – Between Prevention, Infrastructure, and Digitalization. In: Current Trends in the Public Order and Safety System, Vol. I. Sibiu: Techno Media, 2025.
17. Regulation (EU) 2016/679 of the European Parliament and of the Council on the Protection of Natural Persons with Regard to the Processing of Personal Data. Available: https://eur-lex.europa.eu (accessed 20.04.2026).
18. Wachter S., Mittelstadt B., Floridi L. Why a Right to Explanation of Automated Decision-Making Does Not Exist in the GDPR. In: International Data Privacy Law, 2017.
19. Berger J. Invisible Influence. Bucharest: Publica, 2017.
20.

CZU: 343.1:343.575 **DOI: https://doi.org/10.5281/zenodo.20796462**

CRIMINAL DENUNCIATION AS A CRIMINAL POLICY INSTRUMENT IN COMBATING DRUG TRAFFICKING: ANALYSIS OF ROMANIAN REGULATION AND COMPARATIVE LAW BENCHMARKS

Vasile COMAN,
PhD Candidate,
Faculty of Law, Babeș-Bolyai University, Romania,
Judge, Cluj Court of Appeal – Criminal and Juvenile Division, Romania
ORCID: 0009-0006-9225-2310

Abstract

The study examines the role of the criminal denunciation as an instrument of criminal policy in combating drug trafficking, with a particular emphasis on the legal mechanisms that incentivize the cooperation of individuals involved in criminal activities with judicial authorities. The research analyzes the regulatory framework under Romanian law, as established by Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, focusing on the institution of special grounds for non-punishment, respectively for the mitigation of the applicable penalty for the individual who reports the offense and contributes to the identification of other participants in the crime [5, Art. 14-15].

The analysis includes an interpretation of the legal provision in national case law, highlighting the manner in which Romanian courts have applied the statutory conditions concerning the timing of the denunciation, the effective nature of cooperation with judicial authorities, and its impact on the determination of criminal liability. At the same time, the study advances a comparative law perspective by relating the Romanian regulatory framework to legislative solutions existing in other European legal systems, where analogous institutions are designed to facilitate the detection and dismantling of organized crime networks.

Through this approach, the paper seeks to highlight the effectiveness and the inherent limitations of criminal denunciation as a legal mechanism aimed at combating and dismantling drug trafficking networks, as well as to identify potential directions for interpretative development and legislative reform within the framework of contemporary criminal policy.

Keywords: criminal denunciation, drug trafficking, Law No. 143/2000, grounds for non-punishment, reduction of penalty, case law, comparative law.

DENUNȚUL PENAL CA INSTRUMENT DE POLITICĂ PENALĂ ÎN COMBATEREA TRAFICULUI DE DROGURI: ANALIZA REGLEMENTĂRII ROMÂNE ȘI REPERE DE DREPT COMPARAT

Abstract

Studiul analizează rolul denunțului penal ca instrument de politică penală în combaterea traficului de droguri, cu accent pe mecanismele juridice care stimulează cooperarea persoanelor implicate în activități infracționale cu autoritățile judiciare. Cercetarea examinează reglementarea din dreptul român prevăzută de Legea nr. 143/2000 privind prevenirea și combaterea traficului și consumului ilicit de droguri, cu accent pe instituția cauzei speciale de nepedepsire, respectiv de reducere a pedepsei aplicabile persoanei care denunță fapta și contribuie la identificarea altor participanți la infracțiune [5, art. 14-15].

Analiza include interpretarea normei în jurisprudența națională, evidențiind modul în care instanțele române au aplicat condițiile legale referitoare la momentul formulării denunțului, caracterul efectiv al cooperării cu organele judiciare și impactul acesteia asupra stabilirii răspunderii penale. Totodată, studiul propune o perspectivă de drept comparat, prin raportarea reglementării române la soluții legislative existente în alte

sisteme juridice europene, unde instituții similare urmăresc facilitarea descoperirii și destructurării rețelelor de criminalitate organizată.

Prin această abordare, lucrarea își propune să evidențieze eficiența și limitele denunțului penal ca mecanism juridic destinat combaterii și destructurării rețelelor destinate traficului de droguri, precum și să identifice posibile direcții de interpretare și dezvoltare legislativă în contextul politicilor penale contemporane.

Cuvinte-cheie: denunț penal, trafic de droguri, Legea nr. 143/2000, cauză de nepedepsire, reducere a pedepsei, jurisprudență, drept comparat.

Introduction. When it comes to the detection of drug-related offenses, an examination of criminal case law in Romania reveals a fact that is difficult to disregard: the majority of reports originate from denunciations made by individuals already involved in the commission of offenses within this sphere and, almost improperly, from ex officio notifications by the criminal investigation authorities.

Limiting the analysis to the subject matter of the present study, namely, criminal denunciation as a lever of control for the detection, sanctioning, and, ultimately, the combating of the phenomenon associated with drug distribution within society, its utility as a reporting mechanism, expressly enshrined in the provisions of the Romanian Code of Criminal Procedure (Article 290), becomes readily apparent (Article 290(1) of the Code of Criminal Procedure provides that a denunciation constitutes the notification made by a natural or legal person regarding the commission of a criminal offense). At the same time, it will be demonstrated that, within the framework of special legislation governing the drug regime, denunciation acquires multiple legal valences, depending on the timing of its submission and its impact on the substantiation of the reported offenses, the fulfillment of certain statutory conditions being required.

From the perspective of traditional ethics (honor, loyalty), denunciation signifies the betrayal of a close associate (co-perpetrator, accomplice), that is, the breach of a "pact", at least implicit, of solidarity.

The notion that the State "rewards betrayal" has been subject to criticism since the adoption of Romania's first modern Criminal Code in 1865. Under the regime of the 1865 Criminal Code, denunciation was regulated as an absolutory excuse from punishment (a ground for non-punishment), in the interest of society's objective of identifying offenders. However, legal doctrine justifiably argued that "this exemption from punishment is immoral, as it grants such a significant reward to a person who, in addition to the offense itself, of which he is equally guilty as the others, adds betrayal, thereby revealing an even greater degree of perversity".

At the same time, another effect closely aligned with the purpose of the regulation was acknowledged, namely that, in such circumstances, "offenders will find it more difficult to secure accomplices with whom to organize conspiracies (...), as they will fear one another" [1, p.168].

Criminal Denunciation. Valences in the Light of Law No.143/2000 on the Prevention and Combating of Illicit Drug Trafficking and Consumption. The principal special statute governing the repression of drug trafficking (lato sensu) in Romania is Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption [5]. The legal framework in the field of prohibited substances is further complemented by Law No. 194/2011 on combating operations involving products susceptible to having psychoactive effects, other than those regulated by the normative acts in force [6].

Thus, in the context of drug-related offenses, criminal denunciation may serve a dual function, namely as a ground for non-punishment or as a ground for the mitigation

of the penalty, a system that is likewise encountered in other European criminal legislations concerning the prohibition of drug trafficking.

a) Criminal Denunciation: Ground for Non-Punishment.

According to Article 14 of Law No. 143/2000, a person who has committed one of the offenses provided for in Articles 2-9 shall not be punished if, prior to the initiation of criminal proceedings, they report to the authorities their participation in the commission of the offense, thereby contributing to the identification and the bringing to criminal liability of the perpetrator or of the other participants.

Article 14 of Law No. 143/2000 establishes a special ground for non-punishment, affording the individual who has participated in the commission of the offenses provided for in Articles 2-9 the possibility of avoiding criminal liability if they report to the authorities their own involvement prior to the initiation of criminal proceedings (self-denunciation). This measure is aimed both at encouraging cooperation with investigative authorities and at dismantling drug trafficking networks, while recognizing the social value of the contribution made to the identification and prosecution of other participants.

The denunciation must be made prior to the initiation of criminal proceedings, thereby demonstrating the initiative and good faith of the person involved. Although the legislator does not distinguish between proceedings initiated *in rem* (with respect to the act) and those initiated *in personam* (with respect to a person), it is generally accepted that the relevant temporal threshold is the reporting of the offense before the commencement of criminal proceedings *in personam* against at least one individual in relation to the reported act.

In case law, there is divergence as to whether the reporting individual may benefit from the ground for non-punishment in situations where they are not part of a plurality of offenders, namely where they acted as the sole perpetrator of the offense committed.

Thus, in a case from the jurisprudence of the Cluj Court of Appeal, it was held, by majority opinion (2 to 1), that a self-denunciation concerning the reporting individual's own conduct cannot be excluded from the scope of application of this legal provision [9]. More recently, the issue has been settled – albeit only with reference to the offense provided for in Article 2 of Law No. 143/2000 – by Decision No. 30 of 10 February 2026 of the High Court of Cassation and Justice (Panel for the Resolution of Questions of Law), which established that "this special ground for non-punishment provided for in Article 14 of Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, as republished, is not applicable to a reporting individual who is the sole perpetrator of the offense committed and provided for in Article 2 of the same law". For the same reasons, we consider that this decision is likewise applicable to the other offenses referred to in Article 14.

With regard to the legal nature of the provisions of Article 14 of Law No. 143/2000, the reasoning of Decision No. 30 of 10 February 2026 of the High Court of Cassation and Justice (Panel for the Resolution of Questions of Law) affirmed their character as a special statutory ground for non-punishment, of a personal nature, which entails an active conduct on the part of the reporting individual in relation to the substantiation of the criminal participation of other persons in the same reported offense.

b) Criminal Denunciation: Ground for the Reduction of Penalties.

According to Article 15 of Law No. 143/2000, a person who has committed one of the offenses provided for in Articles 2-9 and who, during the criminal investigation, reports and facilitates the identification and the bringing to criminal liability of other individuals who have committed drug-related offenses shall benefit from a reduction by one half of

the statutory limits of the penalty prescribed by law.

The essence of this provision lies in the recognition and encouragement of the defendant's cooperation with the criminal investigation authorities, through the reporting and facilitation of the identification of other individuals involved in offenses of this category. This provision constitutes a form of mitigation of criminal liability, intended to support the efficiency of investigations in the field of drug trafficking, and represents a continuation of the rationale underlying Article 14 of Law No. 143/2000, albeit with a more limited impact, given the procedural stage at which it intervenes, in relation to the efforts already undertaken by the judicial authorities, which have been previously seized in connection with an offense committed by the reporting individual within the same sphere of criminality.

According to case law, the conduct manifested during the criminal proceedings, as reflected in the provisions of Article 15 of Law No. 143/2000, constitutes a particular application of the general criterion for the individualization of punishment provided for in Article 74(1)(f), second thesis, of the Criminal Code, within a specific case [8]. This self-interested conduct of the individual is rewarded by the reduction by one half of the statutory limits of punishment for the commission of certain offenses exhaustively enumerated by Law No. 143/2000, which implicitly, and, as a rule, effectively, entails the real possibility of imposing a more lenient sentence on the person who, during the criminal investigation phase, chooses to provide statements and to facilitate the identification and the bringing to criminal liability of other individuals who have committed drug-related offenses. Consequently, such an attitude, oriented toward the establishment of the truth from the very outset of the criminal proceedings, is valorized in light of the importance of the prompt identification of persons who have committed criminal acts.

The conduct consisting in reporting and facilitating the identification and the bringing to criminal liability of other individuals who have committed drug-related offenses is, however, distinct from the mere acknowledgment of one's own act; the former is aimed at bringing to the attention of the criminal investigation authorities the identity of other participants in the commission of that offense or of other offenses. As will be further demonstrated, the essential requirement is that such information be of a novel character.

In other words, the judicial authorities must not have previously been aware, by any means, of the identity and activities of the reported individuals [9], nor must they have already initiated criminal proceedings against them.

For instance, it has been held that, with regard to the defendant H.'s request to have the denunciation made against P. taken into account, the court considered that the first-instance court had carried out a proper assessment of the conditions required for the applicability of Article 15 of Law No. 143/2000 (similar conditions being also required under Article 19 of Law No. 682/2002), and correctly concluded that this legal institution could not operate in favor of the defendant. The fact that defendant H. had been mentioned as a witness in criminal case no. x/117/2023 (in which P. had been indicted) was not sufficient, given that investigative activities had already been initiated in that case at the time the denunciation was made, and the reported individual was already under the scrutiny of the criminal investigation authorities (as also indicated in the communication issued by DIICOT – Cluj Territorial Service). Consequently, the defendant's contribution in the aforementioned criminal case could not justify the application of any ground for sentence reduction, although it would be taken into account in the individualized assessment of the sentence in relation to the defendant's personal circumstances [10].

Similarly, in another case, it was held that, with respect to the denunciation made by

defendant R., although the reported individual had been indicted, the information provided by the defendant did not facilitate the bringing to criminal liability of that individual, since the reported person already had the status of a defendant in another case [11].

In essence, for the provisions of Article 15 of Law No.143/2000 to be applicable, the following cumulative conditions must be satisfied:

1) The information brought to the attention of the judicial authorities must, in principle, take the form of a denunciation, within the meaning of Article 290(1) of the Code of Criminal Procedure, and must concern specific individuals with respect to whom the judicial authorities do not already have knowledge of their involvement in drug-related criminal activities.

It is particularly necessary to identify a specific individual (by full name) whose prosecution is sought for "drug-related" offenses, accompanied by a description of the acts, even in general terms. At the time of the denunciation, the person concerned must not have already been reported by another individual within the same case or be otherwise known to be involved in the same criminal activity; otherwise, the judicial authorities would already be aware of both the offense and the perpetrator, thereby eliminating the rationale underlying the support afforded to criminal justice, which forms the basis of the ground for sentence reduction.

Thus, it has been held, for example, that defendant B. made no reference to co-defendant X (the reported individual) in his statement as a suspect, entirely omitting the episode concerning the transfer of a quantity of 400 grams of cannabis to the co-defendant. In his statement as a defendant, he later described this episode, specifying (accurately) that X. had been a client identified by A. However, at the time of B.'s statement as a defendant, co-defendant X. had already been reported by A., such that B.'s statement cannot be equated with a denunciation, even though it contributed to X.'s being held criminally liable [12].

In order to meet the requirements of a valid denunciation, the notification cannot be of a generic nature; in some cases, even the indication of a nickname is insufficient if it is not accompanied by additional identifying data. For instance, it has been held that the provisions of Article 15 of Law No. 143/2000 were not applicable because, during the hearing concerning the application of these provisions, the defendant failed to provide further information within the meaning required by Article 15, stating that, since he had ceased involvement with drugs, he was no longer able to supply such data. Moreover, the individuals to whom the defendant referred by nicknames (Gonti, Sanyi, Sapi) in the statement given on 9 August 2015 did not meet the conditions of a denunciation under Article 290 of the Code of Criminal Procedure, nor did they allow for the identification of those persons, whom he described as friends but claimed to know only by their nicknames [13].

Moreover, in order to produce the intended effects, the denunciation must comply with the formal requirements prescribed by the Code of Criminal Procedure (essentially corresponding to those required for a prior complaint as a means of seising the criminal investigation authorities, as reflected in Article 290(2)), most often taking written form. Thus, it was correctly held that, with regard to defendant S., although he submitted a denunciation addressed to DIICOT – Cluj Territorial Service on 17 June 2024 (therefore during the trial stage in the present case), it was returned to him due to non-compliance with the requirements set out in Articles 289(2) and 290 of the Code of Criminal Procedure, and the defendant failed to remedy those deficiencies. Consequently, none of the three grounds for sentence reduction were applicable to him [16].

Similarly, the provisions of Article 15 of Law No.143/2000 do not require that the

information provided be the sole or essential basis for the subsequent initiation of criminal proceedings against the reported individuals. In this regard, it has been held that the applicability of Article 15 does not presuppose that the incriminating evidence (i.e., the essential or decisive evidence) be furnished by the reporting individual. Accordingly, the fact that the prosecution has gathered and administered additional evidence in support of the charges, which subsequently served as the basis for initiating criminal proceedings, cannot lead to the conclusion that this special ground for sentence reduction is inapplicable [17].

2) The denunciation must be made during the criminal investigation directed against the reporting individual, within the context of a specific criminal case.

In order to benefit from the provisions of the legal text, the self-interested denunciation must be made between the moment of the initiation of criminal proceedings (at least *in rem*) and the resolution of the case by the prosecutor. For example, it has been held that, pursuant to Article 15 of Law No.143/2000, the ground for sentence reduction becomes applicable only if the denunciation is made during the criminal investigation; in the case at hand, those provisions were deemed inapplicable to the defendant, given that the denunciation was made after the issuance of the act seising the court, thus after the completion of the criminal investigation [Cluj Court of Appeal, Criminal and Juvenile Division, Criminal Decision No. 1162/A of 16 October 2020, unpublished].

3) The reporting individual must facilitate the identification and the bringing to criminal liability of the person(s) reported, who are alleged to have committed drug-related offenses.

Facilitating the bringing to criminal liability does not necessarily entail the indictment or referral to trial of the person reported by the author of the denunciation (although this typically occurs and confirms the credibility of the denunciation), nor does it imply any relaxation of, or exemption from, the obligation of the criminal investigation authorities to conduct the investigation where the information provided is conclusive, in light of Article 7 of the Code of Criminal Procedure concerning the principle of the mandatory initiation and exercise of criminal proceedings, particularly since the offenses provided for by Law No. 143/2000 are prosecuted *ex officio*.

In this regard, it has been correctly held that, although Article 15 of Law No. 143/2000 does not require a specific procedural outcome of the information provided (a matter which depends, in the first instance, on the subsequent conduct of the investigative authorities), nevertheless, the passivity of the criminal investigation bodies must be unequivocal, and the data supplied by the reporting individual, together with their subsequent actions, must be capable of facilitating the identification and the bringing to criminal liability of persons committing drug-related offenses, in order for the applicability of the legal benefit invoked by the defense to be considered [14].

Similarly, we consider that the scope of this concept also encompasses the reporting of offenses under Law No. 194/2011 on combating operations involving products susceptible to having psychoactive effects, other than those regulated by the normative acts in force, particularly in light of the legislator's recent tendency to reclassify certain "ethnobotanical" substances, due to their effects and prevalence in social practice, as drugs in the strict sense of Law No. 143/2000. Most recently, this development was implemented through Law No. 30/2025 amending and supplementing Annex Tables I-III to Law No. 143/2000, whereby, as of 29 March 2025, substances containing 2-MMC (2-Methylmethcathinone) and/or 2-CMC (2-Chloromethcathinone) have been classified as high-risk drugs, whereas they had previously been regarded as "psychoactive substances" within

the meaning of Law No. 194/2011.

4) The denunciation need not be exclusive in relation to the reported criminal activity; it may be made even after the initiation of criminal proceedings against the reported individual, provided that it concerns new material acts committed by that person.

In practice, prosecutorial units have argued that the denunciation must have an exclusive character with regard to the criminal activity attributed to the reported individual, an approach not endorsed by the courts. Thus, effect has been given to the provisions of Article 15 of Law No. 143/2000 even where the denunciation concerned and facilitated the bringing to criminal liability of the reported person for new material acts forming part of a continued offense, through the extension of the criminal investigation, although proceedings had already been initiated prior to the denunciation. In this regard, it was held that the argument advanced by DIICOT – Cluj Territorial Office, namely that Article 15 would not be applicable because criminal investigations against the reported individual P. were already underway at the time the defendant was heard, could not be upheld, insofar as the criminal activity described by the defendant did not form the subject matter of the investigation at the time of his questioning as a suspect. Moreover, the representative of the prosecution confirmed, at a hearing, that following the defendant's statement, the criminal investigation was extended in respect of P. to include additional acts of drug trafficking committed in relation to the defendant, which had been brought to the attention of the judicial authorities by the latter [21].

The denunciation, and, consequently, the applicability of the provisions of Article 15 of Law No. 143/2000, is, in any event, of a personal nature and is limited to the conduct adopted by the offender during the criminal investigation within a specific criminal proceeding, and not, in general terms, to all subsequent cases in which the offender may have the status of defendant. In such other cases, however, the defendant may rely separately on another mitigating ground, namely the provisions of Law No. 682/2002. In other words, a denunciation has a "single effect" and cannot be invoked in other criminal proceedings concerning the same defendant, even where such proceedings are pending before different judicial authorities. Conversely, the joinder of cases involving concurrent offenses committed by the same defendant may, in principle, lead to an extension of the effect of the analyzed ground for sentence reduction, even where the offenses are committed in ideal concurrence.

Thus, the making of a denunciation by the defendant's spouse or by a person close to them cannot inure to the benefit of the defendant, since, according to the general provisions set out in Article 290 of the Code of Criminal Procedure, a denunciation may be made only personally, its effects not being "transferable." For example, it was held that the defendant did not personally submit a denunciation, the information having been conveyed by the defense counsel as originating from the defendant's spouse. Even accepting that the information provided by the spouse originated from the defendant, who was involved in activities relating to the trafficking of prohibited substances, this contribution was taken into account only in determining the quantum of the penalty [18]. This case-law solution should, however, be approached with caution, since, in the case of defendants held in pre-trial detention, the drafting and submission of a formally compliant denunciation to the attention of the criminal investigation authorities may prove more difficult; consequently, the assistance of a third party close to the defendant should not, in principle, constitute an impediment to the application of the provisions of Article 15 of Law No. 143/2000.

If the denunciation is made after the completion of the criminal investigation di-

rected against the reporting individual, potentially even after their referral to trial, the ground for sentence reduction cannot be applied; however, such proactive conduct may, where appropriate, be taken into account under the provisions of Law No. 682/2002. In case law, it has been noted, in general terms, that the ground provided for in Article 15 of Law No. 143/2000 is subject to similar conditions as that provided for in Article 19 of Law No. 682/2002, with the following distinctions: the former becomes applicable only if the denunciation is made during the criminal investigation; moreover, the denunciation must concern individuals who have committed drug-related offenses, whereas Article 19 of Law No. 682/2002 requires the commission of a serious offense, as legally defined by Article 2(1)(h) of the same law [15]. Thus, it was held in a given case that the indictment was issued on 30 May 2023, at which point the criminal investigation had concluded, while the information concerning the possible commission of drug trafficking offenses was transmitted to the criminal investigation authorities in July 2023 (according to the prosecution's communication), therefore not during the course of the criminal investigation [18].

In any event, in order to benefit from the aforementioned legal provisions, the denunciation must, in all cases, be of a voluntary nature. In this regard, with reference to Article 19 of Law No. 682/2002, the relevant case law of the High Court of Cassation and Justice has established that it is necessary for both the denunciation and the facilitation of bringing other persons to criminal liability to occur during the criminal investigation, to take the form of a voluntary denunciation, and to be made in the course of the criminal investigation conducted against the reporting individual. In the case at hand, these conditions were not fulfilled, since the defendant, caught *in flagrante delicto* by the police, at a time when criminal proceedings had not yet been initiated, identified another individual, C., as the person from whom he had obtained the drugs, thereby attempting to justify their possession [19].

From a procedural standpoint, it should be noted that, at the level of case law aimed at ensuring uniform interpretation, the High Court of Cassation and Justice has held that, in the absence of an express legal regulation concerning the status of the reporting individual, a person who notifies the judicial authorities by way of a denunciation does not participate in the criminal proceedings in the capacity of a "denouncer" *per se*, but rather as a person who has knowledge of facts or factual circumstances relevant to establishing the existence or non-existence of an offense, identifying the perpetrator, and clarifying the circumstances necessary for the fair resolution of the case, thereby contributing to the ascertainment of the truth in criminal proceedings. In other words, the individual who seises the judicial authorities through a denunciation participates in the criminal proceedings thus initiated in the capacity of a witness, with all the rights and obligations provided by law. Any potential benefit that the reporting individual may obtain from the perspective of criminal liability does not affect their procedural status, but rather has consequences exclusively for the probative value of their statement, which remains subject, like any other item of evidence, to the free assessment of the judicial authorities [20].

Criminal Denunciation in Drug-Related Matters: Comparative Law Perspectives. In the criminal law of the Republic of Moldova, it is noted that Article 217(5) of the Criminal Code, concerning the unlawful circulation of narcotic drugs, psychotropic substances, or their analogues without the purpose of distribution, provides that a person who has committed the acts stipulated in Articles 217 or 217[1] shall be exempt from criminal liability if they have actively contributed to the detection or counteraction of offenses related to the illicit circulation of such substances. This contribution may take various forms, including self-denunciation, the voluntary surrender of narcotic drugs, psychotropic substances

or their analogues, the indication of the source from which these substances were obtained, the disclosure of individuals who participated in the commission of the offense, or the identification of monetary assets, property, or proceeds derived from the offense. However, the seizure of such substances at the time of the person's apprehension, or during investigative measures undertaken for their detection and confiscation, cannot be regarded as voluntary surrender.

It may be observed that the legislator of the Republic of Moldova adopts a notably lenient approach, regulating a single ground that excludes criminal liability for certain offenses relating to drug circulation, which consolidates all forms of conduct that, under Romanian criminal law, are valorized through the mechanisms of non-punishment and sentence reduction, while having a mandatory character for judicial authorities. According to legal doctrine, the provisions of Article 217(5) of the Criminal Code represent a special modality of exemption from criminal liability in the field of drug circulation, introduced in 2005, also referred to as a legal mechanism of "incentive-protection" for individuals cooperating with criminal investigation authorities [2, p. 123-129], where the conditions for the application of this mixed ground for excluding criminal liability are also examined.

This is not the case in French criminal law, where the legislator adopts a more reserved stance with regard to explicitly rewarding denunciation. Thus, in matters of drug trafficking (*trafic de stupéfiants*), denunciation or cooperation does not automatically give rise to a reduction of the penalty expressly provided by law, as in Romania; rather, it is assessed indirectly by the judge as a factor in the individualization of punishment, namely as a potential mitigating circumstance (reflecting cooperative conduct with the authorities). The use of specific mitigating circumstances with variable sentence-reducing effects, granted in exchange for the provision of truthful and verifiable information capable of clarifying the investigated facts or enabling the identification of those responsible, is also encountered in certain Latin legal systems, such as Chile [3, p. 211], Colombia (where the compensatory reduction may reach up to three quarters of the sentence), Argentina, and Peru. Within these legal systems, individuals who cooperate in the investigation of drug trafficking offenses may benefit from exemption, reduction, or suspension of penalties, as measures aimed at preventing and combating such criminal activities.

Returning to French legislation, it is noted that Article 222-43 of the French Penal Code provides that the term of imprisonment to which the perpetrator or accomplice of the offenses set out in Articles 222-35 to 222-39 of the Code is subject shall be reduced by two thirds if, after notifying the administrative or judicial authorities, they have made it possible to put an end to the criminal acts or, as the case may be, to identify the other perpetrators. In the case provided for in Article 222-34, the sentence of life imprisonment is reduced to twenty years' imprisonment.

Moreover, pursuant to Article 222-43-1 of the French Penal Code, any person who intends to commit one of the offenses provided for in this section shall be exempt from punishment if, after notifying the administrative or judicial authorities, they have made it possible to prevent the commission of the offense and, where applicable, to identify the other perpetrators or accomplices.

In Italian criminal law, the cornerstone is Presidential Decree No.309/1990 of 9 October 1990, which constitutes the consolidated legislative framework governing narcotic drugs and psychotropic substances. Article 73(7) regulates the institution of cooperation (*collaborazione / del confidente*), according to which the penalty is reduced (generally by up to one half) for individuals who concretely assist the authorities in preventing further

consequences of the offense, identifying or apprehending other participants, or uncovering criminal resources or networks. This institution is frequently applied in judicial practice and has a long-standing tradition rooted in efforts to combat the criminal activities of Italian mafia organizations—among which drug trafficking has been a prominent component—and it closely resembles the institution of the *pentito* (repentant collaborator with justice in organized crime cases). In this context, Giovanni Falcone was arguably one of the most prominent advocates of the procedural utility of cooperating witnesses and of the necessity for adequate legislation capable of effectively protecting those who collaborate from severe reprisals (often physical elimination) by members of the criminal organizations they expose.

Similar to Romanian criminal law, Spanish criminal law provides for a ground for the reduction of penalties for individuals who cooperate with judicial authorities in the sphere of drug-related offenses. Thus, Article 376 of the Spanish Penal Code stipulates that, in the cases provided for in Articles 361-372 of the Code, judges or courts, stating their reasons in the judgment, may impose a penalty one or two degrees lower than that prescribed by law for the respective offense, provided that the individual has voluntarily abandoned their criminal activities and has actively cooperated with the authorities or their agents. Such cooperation may consist in preventing the commission of the offense, obtaining decisive evidence for the identification or apprehension of other perpetrators, or hindering the operation or development of the organizations or associations to which the individual belonged or with which they collaborated.

Furthermore, in a specific context concerning dependent users, pursuant to Article 376(2) of the Spanish Penal Code, in the cases provided for in Articles 368-372, judges or courts may impose a penalty one or two degrees lower on an offender who, being drug-dependent at the time of committing the offense, sufficiently demonstrates that they have successfully completed a rehabilitation program, provided that the quantity of toxic drugs, narcotic substances, or psychotropic substances involved was not of considerable magnitude or of extreme gravity.

A similar mechanism for rewarding bona fide cooperation in matters of drug trafficking or unlawful possession—extending even to complete exemption from punishment—also exists in the criminal law of Hungary and Russia, where the interested individual discloses the offense or contributes to the establishment of evidence concerning both the act and the involvement of other participants.

Conclusions. In conclusion, the analysis of the institution of criminal denunciation in the field of drug-related offenses highlights its essential role as an instrument of criminal policy aimed at enhancing the efficiency of the detection, mapping, and dismantling of criminal networks. Far from representing merely an ethically questionable manifestation, denunciation acquires, within the current normative framework, a pragmatic function subordinated to the general societal interest in combating serious crime. In this sense, the dual regulation established by Law No. 143/2000—as a mechanism of non-punishment (criminal immunity) or of sentence reduction—reflects a clear legislative choice to incentivize early and effective cooperation with judicial authorities, depending on the timing and the concrete utility of the information provided.

At the same time, recent case law, including the interventions of the High Court of Cassation and Justice, contributes to shaping the interpretative benchmarks necessary for the coherent application of these provisions, particularly with regard to the conditions for their applicability and the limits of the benefits granted to reporting individuals. A tendency may be observed toward a more nuanced assessment of the criteria relating

to the useful, novel, and effective character of the denunciation, as well as a rigorous distinction between the mere acknowledgment of one's own conduct and genuine cooperation aimed at bringing other participants to criminal liability. In this context, denunciation is not assessed in a purely formal manner, but rather in light of its actual contribution to the ascertainment of the truth, requiring a concrete analysis in each individual case in order to prevent the distortion of the institution's purpose.

From a comparative perspective, the legislative solutions examined confirm the existence of a broader European trend toward encouraging offenders' cooperation with authorities, albeit through varying regulatory techniques and degrees of intensity. While some systems, such as the Romanian or Spanish ones, expressly enshrine grounds for sentence reduction or non-punishment, others, such as French law, leave a broader margin of appreciation to the judge, whereas models such as those of Republic of Moldova or Italy incorporate more extensive mechanisms for incentivizing cooperation. Within this landscape, the Romanian regulatory framework appears to be a balanced one, albeit not devoid of practical difficulties, which calls for a careful application and, potentially, for legislative refinement, in line with the evolving dynamics of criminal phenomena and the requirements of a fair criminal process.

In essence, the regulation of compensatory mechanisms for cooperation with judicial authorities has emerged as a response of the legal system to the need to overcome, first and foremost, the difficulties encountered in the judicial repression of certain criminal organizations, whose defining characteristics (secrecy, opacity, and the use of force) have long challenged, and continue to challenge, traditional investigative tools. Indirectly, such mechanisms encourage disengagement from the criminal path [4, p. 8-9], the reporting individual providing judicial authorities with indispensable insider information that contributes to the detection and prosecution of key actors within the criminal drug milieu, thereby enhancing the effectiveness of efforts to combat the phenomenon through the mechanisms of criminal justice.

Bibliographical references

1. Dumitrescu Mihăilescu. Manual de drept penal. Biblioteca juridică "M.A. Dumitrescu", Bucharest.
2. Nastas Andrei, Cernomoreț Sergiu. Exemption from Criminal Liability for the Illicit Circulation of Drugs, Ethnobotanicals or Their Analogues. Legislation and Practice of the Republic of Moldova (Part I), Revista Universul Juridic, No. 10/2022, p. 123-129.
3. Silva Hernán. La cooperación eficaz de la ley de drogas, in Revista de Derecho y Ciencias Penales. No. 17/2011, Universidad San Sebastián (Chile), p.211.
4. Vigna P.L., Laudati A. Contro la mafia globalizzata il pentito non può appartenere a un solo ufficio, in Diritto e Giustizia. 201, No.31, p.8-9.
5. Law No.143/2000 on the prevention and combating of illicit drug trafficking and consumption. In: Official Gazette, No.163 of 6 March 2014.
6. Law No.194/2011 on combating operations involving products susceptible to having psychoactive effects, other than those regulated by normative acts in force. In: Official Gazette, No. 140 of 26 February 2014.
7. Cluj Court of Appeal. Criminal and Juvenile Division, Criminal Decision No.901/A of 29 May 2024, unpublished.
8. Târgu Mureș Court of Appeal. Criminal and Juvenile and Family Division. Criminal Decision No.316/A of 30 June 2021, unpublished.
9. Târgu Mureș Court of Appeal. Criminal and Juvenile and Family Division. Criminal De-

cision No.316/A of 8 October 2020, unpublished.
10. Cluj Court of Appeal. Criminal and Juvenile Division. Criminal Decision No.1228/A of 25 July 2024, unpublished.
11. Cluj Tribunal, Criminal Division, Criminal Judgment No.310 of 19 December 2024, unpublished.
12. Târgu Mureș Court of Appeal. Criminal and Juvenile and Family Division. Criminal Decision No.77/A of 14 February 2022, unpublished.
13. Harghita Tribunal, Criminal Division, Criminal Judgment No.76 of 10 October 2019, unpublished.
14. Cluj Tribunal, Criminal Division, Criminal Judgment No.229 of 20 July 2021, www.rejust.ro.
15. Cluj Court of Appeal, Criminal and Juvenile Division, Criminal Decision No.1162/A of 16 October 2020, unpublished.
16. Cluj Tribunal, Criminal Division, Criminal Judgment No.12 of 14 January 2025, unpublished.
17. Cluj Tribunal, Criminal Division, Criminal Judgment No.267 of 16 October 2019, www.rejust.ro.
18. Cluj Court of Appeal, Criminal and Juvenile Division, Criminal Decision No.1381/A of 4 October 2024, unpublished.
19. High Court of Cassation and Justice, Criminal Decision No.114/RC of 10 March 2022, www.iccj.ro.
20. High Court of Cassation and Justice, Decision (RIL) No.1 of 16 January 2020, www.iccj.ro.
21. Cluj Court of Appeal, Criminal and Juvenile Division, Criminal Decision No.1551/A of 9 December 2021, unpublished.

UDC 159.9:316.77-057.36”364” **DOI: https://doi.org/10.5281/zenodo.20796570**

PSYHOLOGICAL TECHNIQUES OF POLICE CRISIS COMMUNICATION WITH VETERANS IN CONDITIONS OF MARTIAL LAW

Olena FEDORENKO,
PhD, University Professor,
Head of Psychology, Sociology and Pedagogy Department,
Kharkiv National University of Internal Affairs,
Ukraine
ORCID: 0000-0003-4948-9524

Viktoriia DOTSENKO,
PhD Candidate, Associate Professor,
Psychology, Sociology and Pedagogy Department,
Kharkiv National University of Internal Affairs,
Ukraine
ORCID: 0000-0001-7757-2793

Abstract

The work provides a comprehensive analysis of the tactical and psychological aspects of the police officer's crisis communication in the conditions of modern social dynamics. The essence of crisis communication as a specific form of interpersonal interaction, characterized by high emotional tension and confrontation of the interests of the parties, is revealed. Based on the analysis of the professional activity of law enforcement officers, it is substantiated that the success of solving critical situations directly depends on the communicative lability of the police officer and his ability to quickly adapt behavior strategies in accordance with the opponent's actions.

Particular attention is paid to the systematization of verbal and non-verbal techniques of psychological influence. The mechanisms of reflective and non-reflective listening are analyzed, as well as specific psychological techniques, including self-disclosure, empathy, and emotional mirroring, which contribute to reducing psychological resistance and establishing psychological contact. It is demonstrated that adherence to professional and ethical standards at the initial stage of interaction constitutes a fundamental prerequisite for building trust and ensuring the de-escalation of conflict situations.

The study focuses on the specifics of police interaction with individuals who have combat experience. Communication algorithms are proposed, based on the principles of cautious respect, consideration of post-traumatic conditions, and rejection of an authoritarian communication style. It is argued that the use of empathetic support methods and rational argumentation serves as a key factor in preventing violence and ensuring public safety. The findings have practical significance for improving the professional training of police officers and increasing the effectiveness of their activities in extreme conditions.

Keywords: crisis communication, policing, de-escalation of conflict, psychological contact, psychological techniques, interaction with veterans.

TEHNICI PSIHOLOGICE DE COMUNICARE ÎN CRIZĂ ÎNTRE POLIȚIE ȘI VETERAN ÎN CONDIȚII DE LEGE MARȚIALĂ

Abstract

Lucrarea oferă o analiză cuprinzătoare a aspectelor tactice și psihologice ale comunicării de criză a polițistului în condițiile dinamicii sociale moderne. Este evidențiată esența comunicării de criză ca formă spe-

cifică de interacțiune interpersonală, caracterizată prin tensiune emoțională ridicată și confruntarea intereselor părților implicate. Pe baza analizei activității profesionale a organelor de aplicare a legii, se argumentează că succesul soluționării situațiilor critice depinde în mod direct de flexibilitatea comunicativă a polițistului și de capacitatea acestuia de a adapta rapid strategiile comportamentale în funcție de acțiunile interlocutorului/oponentului.

O atenție deosebită este acordată sistematizării tehnicilor verbale și nonverbale de influență psihologică. Sunt analizate mecanismele ascultării reflective și non-reflective, precum și tehnici psihologice specifice, inclusiv autodivulgarea, empatia și oglindirea emoțională, care contribuie la reducerea rezistenței psihologice și la stabilirea contactului psihologic. Se demonstrează că respectarea standardelor profesionale și etice în etapa inițială a interacțiunii constituie o premisă fundamentală pentru construirea încrederii și asigurarea dezescaladării situațiilor conflictuale.

Studiul se concentrează asupra particularităților interacțiunii poliției cu persoanele care au experiență de luptă. Sunt propuse algoritmi de comunicare bazați pe principiile respectului prudent, luării în considerare a stărilor post-traumatice și respingerii unui stil autoritar de comunicare. Se argumentează că utilizarea metodelor de sprijin empatic și a argumentării raționale reprezintă un factor-cheie în prevenirea violenței și asigurarea siguranței publice. Rezultatele cercetării au semnificație practică pentru îmbunătățirea pregătirii profesionale a polițiștilor și creșterea eficienței activității acestora în condiții extreme.

Cuvinte-cheie: comunicare de criză, activitate polițienească, dezescaladarea conflictului, contact psihologic, tehnici psihologice, interacțiunea cu veteranii.

Introduction. In the modern conditions of the transformation of the law enforcement system and the growth of social tension, the communicative competence of a policeman goes beyond purely official etiquette, becoming a strategic tool for ensuring public safety. Crisis communication in police activities is defined as a specific form of interaction in extreme or conflict conditions, where time pressure, high emotional tension and the opposite interests of the parties create risks of escalation of violence.

The relevance of the study is due to the need to move from traditionally authoritarian methods of conflict management to scientifically based psychological techniques of dialogue. Of particular importance is the ability of the policeman to combine verbal and non-verbal means of influence to establish psychological contact, which is a basic condition for achieving trust on the part of citizens. In this context, a critically important aspect of professional activity is the development and implementation of algorithms for interaction with certain categories of persons, in particular veterans and combatants. The specificity of their psycho-emotional state, formed by combat experience, requires law enforcement officers not only to know legal norms, but also to possess the skills of empathic listening, recognition of psychological triggers and the use of de-escalation techniques that allow minimizing the risks of conflicts in the rear regions

The conceptualization of crisis communication in police activity involves considering this phenomenon as a dynamic system of interaction in conditions of acute confrontation between the goals, interests and value positions of the parties.

The development of psychological technologies for working with veterans is based on the principles of humanistic psychology (C. Rogers), nonviolent communication (M. Rosenberg) [3], as well as on the scientific research of W.T. Coombs, S. Holladay, R. Heath [4], and E. James in the field of crisis communication. When developing recommendations on crisis communication for police officers, the research of Ukrainian scholars was taken into account [2].

A characteristic feature of such a process is intense interpersonal interaction, where each subject's behavioral strategies are forced to adapt to the opponent's actions in real time. Under these circumstances, the communicative liability of the policeman becomes decisive, which is manifested in the ability to effectively interact with representatives of various social groups, apply active listening techniques and transform the conflict poten-

tial of the situation into a constructive dialogue. The effectiveness of a law enforcement officer under such conditions is determined not only by the reasonableness of his position, but also by the ability to form an attraction and establish stable trust, which is a basic preposition for the successful de-escalation of the crisis.

At the same time, the manner of communication is influenced by the environment, well-being, features of the communicative situation, etc. However, despite the situation, the policeman must follow certain rules of communication when communicating, namely: equality, benevolence, impartiality, the ability to listen to another person and understand him, tact and mutual respect.

The policeman must start crisis communication with citizens with a greeting, refraining from shaking hands and must introduce himself, name the position, special rank, surname, briefly inform the purpose and reason for the application, at the citizen's request to present an official certificate/token. In the course of his official duties, he must refrain from any action that could degrade his dignity, cause doubt about his impartiality or undermine his authority.

In communication, the policeman must be tactful, educated and friendly, express demands and/or remarks in a calm, correct, convincing form, not show superiority, not use threats, irony, jargon, familiar tone. If necessary, calmly, without irritation, repeat and clarify the content of what was said or legal requirements, listen to the person's explanations or questions carefully, without interrupting, showing kindness and respect to the opponent (interlocutor).

At the initial stage, the communication technique includes such elements as the corresponding facial expression, pose, choice of initial words and tone of expression, movements and gestures, actions that attract the attention of another participant of the communication, aimed in advance at his adjustment, at a certain perception of the information transmitted to the police. Therefore, it is important to pay attention to non-verbal communication and use means of its influence when communicating.

Communicative interaction of people, including a policeman, with a citizen occurs mainly in verbal (verbal) form, through emotional-positive influence (encouragement) and emotional-negative influence (punishment). Without the application of the communicative categories «approval» or «disapproval», joint communication is impossible.

An act of verbal communication is a dialogue consisting of speaking and listening. Generally speaking, dialogue is a form of productive, conflict-free and constructive communication designed to clarify what is happening during a crisis, and to understand the issue and the problem that needs to be resolved.

In a conversation, it is essential for the police officer to be understood by the other person involved, and for the police officer to listen to and understand the other person.

The best way to achieve this is through non-reflective listening. The essence of this type of dialogue lies in the police officer not interrupting the other person speaking – this is known as conditionally passive listening. In particular, neutral words such as 'yes', 'I see' and 'that's interesting' help to keep the conversation going and ease tension.

Another method is reflective listening. This involves the police officer establishing a dialogue with the other party to ensure that the information has been correctly understood. In other words, it requires the police officer to listen carefully in order to ascertain the true meaning of the communication;

In a conversation, it is essential that the police officer is understood by the other person involved, and that the police officer listens to and understands the other person.

The key to effective dialogue lies in the following: do not rush to judgement, but

strive to understand the nature of the crisis, its causes and possible solutions; take into account both verbal and non-verbal cues (posture, breathing, eye contact, head and hand movements, tone of voice, rate of speech, rhythm, etc.).

Tactical and psychological techniques during crisis communication aimed at exerting psychological influence and altering the behaviour of the communication participant (in accordance with the logic of crisis communication, the tactical techniques used are applied consistently or variably, depending on the crisis situation and the dynamics of its development; they can and must be adapted as necessary, some techniques may be abandoned, others replaced, but deviation from the stated goals and objectives of crisis communication is unacceptable) [1]:

– *Self-disclosure*: is the most effective technique, based on the principle that candid information shared by a participant in crisis communication (the offender) about themselves can help the police officer establish a connection and build a rapport with them. People open up more readily and candidly to those they know better. In a free-flowing conversation, one can discuss one's own interests and feelings, and sometimes even aspects of one's professional or personal life. Self-disclosure, in addition to its effectiveness and speed, proves useful as an information tactic; that is, a frank conversation elicits openness in the interlocutor;

– *Empathy*: one should demonstrate a high degree of empathy in response to the words and actions of the person involved in the crisis communication. One of the most effective ways of building a rapport with the person involved in the crisis communication (the offender) is the ability to show them that the police officer is capable of putting themselves in their shoes for a moment and seeing the crisis situation (incident) through their eyes. An important aspect of empathy is that, during crisis communication, the police officer demonstrates their understanding of the views of the crisis communication participant (the offender) to that very participant (the offender). Empathy can manifest itself: in agreement – one should demonstrate agreement with the participant in the crisis communication (the offender) regarding those points that reflect the fairness of their demands, and persuade them to refrain from committing unlawful acts; reflecting feelings – focusing on the words and actions of the crisis communication participant (offender), using language that this participant understands, and helping them to think through thoughts and feelings they are at least aware of to some extent;

– The use of so-called '*warmth*' is effective in building mutual understanding and trust, achieved through the voice, genuine interest, and the police officer's active demonstration of an attempt to understand the party involved in the crisis communication (the offender), their concern, and their belief in reaching a mutually acceptable solution in the crisis situation;

– The "*stalling*" or "*waiting*" technique – used to delay the course of crisis communication in order to ascertain necessary information about the party involved in the crisis (the offender), to clarify the crisis situation, and to formulate the appropriate response, etc. To gather information, it is advisable for the police officer to use open-ended questions that require a long, detailed answer. For example: "What has happened here?", "What do you mean when you say...?", "How, in your opinion, can we resolve this issue and reach an agreement?", "How do you view your actions and what do you propose...?". Thanks to such questions, the participant in the crisis communication can explain their position and provide the police officer with a significant amount of information. Furthermore, the more attentively the police officer listens to the participant in the crisis communication (the offender), the more open and detailed the latter's answers will be; the police officer should also make

such comments or suggestions that demonstrate their interest in what the participant in the crisis communication (the offender) is saying. If circumstances permit, the police officer should demonstrate their interest in continuing the dialogue through gestures, facial expressions, eye contact, etc. Under no circumstances should they interrupt the offender, even if the police officer is certain that they are lying. Once they have finished speaking, you should calmly ask if they wish to add anything or if there is anything troubling them, and it is advisable to encourage them to respond with phrases such as "Please continue" or "And what happened next...?" or "What do you think should be done...?" During the conversation, it is important for the police officer to use paraphrasing, i.e. repeating to the participant in the crisis communication their own statements in different words, the meaning of which they have already conveyed to the police officer. This method of presenting the information received also demonstrates interest, attention and understanding of what the person involved in the crisis communication (the offender) is trying to say, as well as encouraging them to provide the necessary information;

– *Reflecting feelings*: the police officer focuses on conveying to the person involved in the crisis communication that they understand their feelings, and on paying attention to their emotional state, etc. When using this technique, it is important to pay attention not only to what the person involved in the crisis communication is saying, but also to how they say it (volume, speed, intonation, etc.);

– *Confrontation*: a clash or opposition of views, principles, etc.; a technique based on differences and contradictions, which involves clarifying information received from a participant in crisis communication (the offender). By pointing out contradictions in their statements, it is easier for the police officer to ask them appropriate questions to continue the communication;

– *An assessment technique* based on the police officer's consideration of the individual's mental state and personal characteristics, and which also demonstrates a certain degree of empathy (an understanding of another person's relationships, feelings and mental states in the form of shared experience);

– *Detailing the problem*: it is helpful to break down a problematic communication situation with a person into sub-problems and try to resolve each one separately. Examining the individual parts and details of the main problem helps to clarify it and, ultimately, to resolve it;

– *Diagnostic issues*: asking the individual a series of questions to ascertain their level of understanding of the crisis situation, their attitude towards the police officer's instructions, and to reveal their personal qualities (such as responsibility, decisiveness, independence, etc.);

– *Demonstrating the benefits and advantages*: a tactic typically used to bring unlawful conduct to an end by showing the offender the benefits and advantages of complying with the police's lawful demands;

– *The development of dependency*: personal (psychological) dependency arises when a police officer makes legitimate demands of an offender and creates in the offender the impression that only the police officer, as a person, can help them resolve the crisis with dignity;

– *Demonstrating the wrongfulness of actions*: a technique based on a police officer's reasoned demonstration that the offender's chosen objective is false and contrived, thereby hindering the effective resolution of a crisis situation.

The strategy for crisis communication with different groups of citizens has two aspects:

1) A police officer must be able to control their emotions so that their actions do not lead to a conflict (or exacerbate a crisis situation) when communicating with another party involved in the crisis, and if a conflict (or crisis situation) has already arisen, they must choose the most appropriate course of action, enabling them to maintain their composure and not lose their temper;

2) The police officer must exert such influence over the other party involved in the crisis communication (the offender) as would help to restore that person to a normal (mentally stable) state, defuse the conflict and carry out the assigned task in accordance with the police officer's powers.

The main argumentation techniques aimed at convincing a member of the public of the necessity and correctness of actions during communication, and at establishing a relationship of trust between the police officer and the other party involved in crisis communication, are:

– *Emotional persuasion*: the use of emotional imagery, feelings and the officer's own experience. The essence of this technique lies in creating an emotional scenario with the member of the public in the leading role. Whilst in this fantasy, the citizen tries on the feelings of the other side (the other party involved in the crisis situation), putting themselves in their shoes ("Imagine yourself in the shoes of…", "Would you like to see such consequences for yourself?");

– *Rational persuasion*: the use of facts and arguments to change someone's position. The essence of this technique lies in presenting facts and arguments that help to gain consent and win the citizen over to one's side. The citizen weighs up the arguments and sides with the police officer. Explaining the link between the police officer's actions and the benefits for the citizen ("What I am doing – How will this help you?"), as well as explaining the link between the citizen's actions and the consequences they will face ("If you do…, you will face the following consequences…");

– *Engaging in cooperation*: persuading someone by involving them in the action on one's side. Instead of confrontation, the member of the public becomes the police officer's ally ("I (the police) need your help…", "Give me some advice – what would you do if you were in my position?").

During crisis communication, it is important to establish a relationship of trust with the individual. The following factors help to foster a relationship of trust between a police officer and another party involved in crisis communication when communicating:

1) Demonstrating personal professional qualities: conducting effective preventive discussions; helping to resolve minor issues faced by members of the public (family conflicts, minor disputes); reducing crime rates in the area;

2) Demonstrating personal moral and ethical qualities: honesty and integrity; willingness to help; willingness to work for the community; no desire to participate in corrupt schemes;

3) Demonstrating the benefits of cooperation with the police: participation in various community events (open sessions, educational sessions, safety classes, etc.); reporting to the community in the manner prescribed by regulatory and legal acts; demonstrating the mutual benefits of cooperation;

4) Non-verbal demonstration: a sincere and open attitude when communicating; open gestures, showing open hands; absence of non-verbal barriers between the citizen and the police officer; confident behaviour, tone of voice, emotional contagion (expression); demonstration of equality in communication; respect for the citizen's personal space; a smile (friendly facial expressions); empathy (shared feeling);

5) Verbal techniques: listening attentively without interruptions; a genuine interest in understanding the citizen's goals and way of life; demonstrating attention to the citizen's words and feelings; using emotional support techniques where appropriate; clear and understandable instructions, requests and questions during communication; creating an informal yet professional atmosphere during communication; having a sense of humour and demonstrating linguistic resourcefulness.

To ensure effective, conflict-free communication, a protocol for police officers' interactions with veterans and combatants has been developed and recommended for use. In such situations, military personnel are guided by the rules of conduct in combat. The issue of trust is of paramount importance to them. Many military personnel may display more aggressive behaviour; irritation arises in communication and the level of conflict increases. Reactions are often extremely intense, manifesting as aggression and attempts to keep the interlocutor under control. Often, their behaviour and communication are marked by unwarranted wariness, suspicion, anxiety, and a refusal to accept the police officer's instructions. Therefore, to establish contact and trust, police officers must follow the following recommendations when communicating with serving military personnel or veterans:

1) *Greeting*: greet the person in a friendly manner, introduce yourself, and clearly explain the basis and reason for your visit. It is preferable for a police officer with combat experience (if available) to initiate communication with the serviceman;

2) *General attitude*: cautious respect (express respect for the soldier's experience and contribution to the defence of Ukraine's territorial integrity and sovereignty);

3) *Active listening*: listen without interrupting and give him or them the opportunity to express their thoughts and feelings;

4) *Reflecting feelings*: acknowledge their emotions using phrases such as: 'I understand that this is difficult' (it is preferable for such phrases to be spoken by a police officer who has also taken part in combat operations);

5) *Sensitivity*: be attentive to the soldiers' emotions and take potential triggers into account. Do not use expressions such as: «War is hell», «Yes, I understand» and so on during communication;

6) *Restraint*: avoid imposing your own opinion, respect their experiences, and control your own emotional state. Avoid sudden movements and a loud tone of voice (the service member may be suffering from concussion). Where possible, avoid threats, orders, an authoritarian style of communication, and the use of force against the person you are speaking to. Maintain social distancing whilst communicating;

7) You should have a range of responses ready in case of provocative questions from a citizen (serviceman) who has returned from a combat zone ("Why are you here and not at the front?"), for example:

– the need to maintain order behind the front lines;

– the need to uphold the rule of law, so that families are not afraid to return home in the evening or walk the streets of the city;

– each of us is in uniform, wears epaulettes and carries out our orders. You carry out the orders of your superiors. I also have my superiors, and I also carry out their orders;

8) *Identifying needs*: ask what is troubling the service member and what their needs are;

9) *Attitude towards the situation*: ask open-ended questions to find out more about the service member's perspective;

10) *Providing support* (as appropriate). Offering help: suggest possible solutions or

resources that might be useful;

11) *Informing about rights*: explain what rights and options servicemen have, if appropriate;

12) *Concluding the conversation*. Summarising: summarise what has been discussed and determine the next steps regarding the situation. Thanking: express gratitude for their openness and willingness to communicate;

13) *Personal safety during communication*. Maintain social distancing whilst communicating. Your partner should adopt an observer's position – in the event of aggressive behaviors by the person you are speaking to (the service member) – and warn you of the danger in good time (bear in mind that the person you are speaking to may be carrying a weapon or explosives). If the situation escalates, call a patrol police crew for assistance and report the escalation of the crisis to your immediate supervisor.

Conclusions. Based on the analysis of the tactical and psychological aspects of crisis communication in police work, it can be argued that the effectiveness of de-escalating conflict situations is determined by the integrated use of verbal techniques and non-verbal tools. Establishing a stable psychological rapport at the initial stage through strict adherence to deontological norms – in particular, proper identification, tact and maintaining professional distance – serves as a fundamental prerequisite for minimizing resistance and building trust in law enforcement officers.

At the same time, the use of specific techniques, such as self-disclosure, empathy and mirroring emotions, enables the police officer to transform communication from a tool of coercion into a tool for managing the offender's psychological and emotional state. This helps to uncover the opponent's position and obtain the relevant information needed to resolve the crisis constructively. The success of crisis interaction depends directly on the police officer's ability to swiftly adjust their methods of influence – from active reflective listening to techniques for stalling, confrontation or elaborating on the problem – depending on the dynamics of the situation and the personal characteristics of the individual. In this context, every tactical manoeuvre is subordinated to the single goal of stabilising the mental state of those involved and bringing unlawful actions to an end.

A particularly critical aspect is the approach to communicating with individuals who have combat experience, which requires a specific framework of trust based on the principle of cautious respect and a deep understanding of post-traumatic triggers. Moving away from an authoritarian style in favors of empathetic support and rational argumentation is a key factor in preventing conflicts in the civilian environment and maintaining the authority of law enforcement agencies.

Bibliographical references

1. Metodychni rekomendatsii shchodo efektyvnoi ta etychnoi vzaiemodii zi zvilnenymy z polonu veteranamy: zatv. nakazom Ministerstva u spravakh veteraniv Ukrainy vid 09 veresnia 2025. No.691. Available: https://mva.gov.ua/nakaz-vid-8.
2. Profesiino-psykholohichna pidhotovka politseiskykh: navch. posib. / O. I. Fedorenko, N. E. Miloradova, S. V. Kharchenko. In: MVS Ukrainy, Kharkiv. nats. un-t vnutr. sprav. – Kharkiv: KhNUVS, 2025. 463 p.
3. Rozenberh M. Mova zhyttia. Nenasylnytske spilkuvannia. Kharkiv: Ranok, 2020. 256 p.
4. Millar D.P., Heath R.L. Responding to Crisis: A Rhetorical Approach to Crisis Communication. New York: Imprint Routledge, 2003. 392 p.

CZU 343.37 **DOI: https://doi.org/10.5281/zenodo.20796733**

ASSET RECOVERY IN MONEY LAUNDERING CASES: CONTEMPORARY DEVELOPMENTS AND CHALLENGES

Daniela ȘOIMU,
Expert, AML/CFT Division,
National Bank of Moldova
ORCID: 0009-0002-3349-621X

Marius FRIJA,
MSc, Delft University of Technology, The Netherlands,
AML/CFT Transaction Monitoring Intern at Worldline
ORCID: 0009-0002-3915-2178

Abstract

In the context of money laundering, the recovery of criminal assets is a key component of modern frameworks for preventing and combating financial crime. Effective recovery measures prevent criminals from profiting from illicit gains and strengthen public confidence in the legal system and financial institutions.

This paper examines contemporary mechanisms for identifying, freezing, seizing, and confiscating assets derived from predicate offenses and money laundering operations. It addresses both traditional measures, such as seizure and restraining orders, as well as modern approaches, including provisional freezing, international cooperation, and the role of authorities in early interventions.

The paper also discusses legal and operational challenges, such as complex transnational networks, the risk of rapid asset dissipation, and the need to balance efficiency with procedural safeguards. The study emphasizes the need for a comprehensive, flexible, and well-regulated set of measures to prevent criminals from profiting from illegal activities while ensuring compliance with national and international law.

Keywords: money laundering, criminal asset recovery, freezing, seizure, confiscation.

RECUPERAREA BUNURILOR INFRACȚIONALE ÎN CAUZELE DE SPĂLARE A BANILOR: EVOLUȚII ȘI PROVOCĂRI CONTEMPORANE

Abstract

Recuperarea bunurilor infracționale în contextul spălării a banilor reprezintă un element esențial al cadrului modern de prevenire și combatere a criminalității financiare. Măsurile eficiente de recuperare nu doar că împiedică infractorii să beneficieze de câștiguri ilicite, dar consolidează și încrederea publică în sistemul juridic și în instituțiile financiare.

Lucrarea analizează mecanismele contemporane de identificare, înghețare, sechestrare și confiscare a bunurilor provenite din infracțiuni predicat și din operațiuni de spălare a banilor. Sunt abordate atât măsurile tradiționale, precum ordinele de sechestru sau restricție, cât și metodele moderne, inclusiv înghețarea provizorie, cooperarea internațională și rolul autorităților în intervențiile timpurii.

De asemenea, sunt discutate provocările juridice și operaționale, cum ar fi rețelele transnaționale complexe, riscul de dizipare rapidă a activelor și necesitatea de a echilibra eficiența cu respectarea drepturilor procesuale. Studiul evidențiază că un ansamblu cuprinzător, flexibil și bine reglementat de măsuri este esențial pentru prevenirea profitului din infracțiuni și pentru respectarea legislației naționale și internaționale.

Cuvinte-cheie: spălarea banilor, recuperarea bunurilor infracționale, înghețarea, sechestrul, confiscarea.

Introduction. The crime of money laundering poses a major threat to economic stability and the integrity of the global financial system. In this context, the recovery of proceeds of crime becomes an essential tool in preventing and combating financial crime, serving to deprive offenders of illicit gains and restore the rule of law. The effectiveness of asset recovery mechanisms is closely linked to the existence of a clear, coherent regulatory framework that is consistently enforced by the competent authorities.

The topic addressed in this research is of particular relevance, given the complexity and dynamics of the phenomenon of money laundering, as well as the practical difficulties associated with identifying, tracing, and confiscating the proceeds of crime. At the same time, the accelerated digitization of financial services and the expanding use of virtual assets (cryptocurrencies, digital tokens, DeFi platforms) have led to significant changes in how money laundering offenses are committed. These developments pose additional challenges in the process of identifying, tracing, and recovering criminal assets, particularly given the relative anonymity, decentralization, and cross-border nature of transactions conducted in the digital environment.

The study contributes to the development of public policies in this area by providing theoretical and practical guidelines for improving mechanisms for the recovery of illicit assets. At the same time, this research takes on increased importance in the context of the Republic of Moldova's integration into the European Union, particularly in light of the new European regulations in the 2024 AML (Anti-Money Laundering) Package, which impose advanced standards regarding the confiscation and administration of assets derived from criminal activity.

Methods and materials applied. The methodology used in this study combines methods specific to legal science, adapted to the analysis of mechanisms for the recovery of criminal assets in money laundering cases. Thus, the logical analysis method enabled the substantiation of the legal framework applicable to asset freezing and confiscation measures; the comparative method facilitated the examination of national regulations in relation to European and international standards, highlighting convergences, differences, and evolving trends; and the classification method contributed to the systematization of recovery measures (identification, freezing, seizure, confiscation), based on their nature and purpose, as well as their impact on combating criminal activity.

As part of the assessment of the national system for preventing and combating money laundering, in relation to Recommendation 4 (Confiscation and provisional measures) of the Financial Action Task Force (FATF), the competent authorities were encouraged to strengthen their capacity to identify, freeze, and confiscate the proceeds of crime [1]. In this regard, the Republic of Moldova was prompted to adopt legislative and institutional measures designed to facilitate the recovery of illegally obtained assets and prevent their integration into the legal economic circuit.

At the same time, it is imperative to establish an effective mechanism for the administration and utilization of confiscated assets, in accordance with international standards, which ensures not only the preservation of the economic value of frozen assets but also their use in a transparent, responsible, and public-interest-oriented manner.

In this context, the Republic of Moldova's recent legislative initiatives mark a significant shift from a traditional model—focused exclusively on confiscation as a punitive measure—toward an integrated model for the recovery and reuse of assets derived from criminal activity. The draft law on the use of funds and assets confiscated from criminal activities introduces a regulatory framework that explicitly governs the use of these assets, emphasizing their utilization for social, educational, and institutional strengthening purposes.

Thus, the proposed mechanism [2] establishes clear procedures for the administration, record-keeping, and allocation of confiscated assets, including through the creation of structures or commissions responsible for evaluating requests for use and monitoring how these assets are utilized. Such an approach contributes to increasing transparency and reducing the risks of inefficient or abusive management of confiscated assets, a problem frequently highlighted in international evaluations.

Furthermore, the new regulatory framework promotes the principle of the social reuse of the proceeds of crime, established in European case law and practice, according to which confiscated assets must be reintegrated into the legal economy for the benefit of society. This involves directing resources toward funding public interest projects, supporting civil society organizations, and strengthening the capacities of institutions involved in preventing and combating crime.

Regarding judicial practice, there is a noticeable trend toward strengthening the application of mechanisms for the recovery of criminal assets, with national courts gradually moving toward a more rigorous regime aligned with international standards. According to the conclusions of the National Risk Assessment Report on Money Laundering and Terrorist Financing (NRA), approved on December 9, 2025 [3], improvements have been noted in the implementation of preventive and punitive measures, including in the area of confiscation. However, difficulties persist regarding the uniform application of these measures and the efficiency of the process for recovering illicit assets.

Thus, case law in the Republic of Moldova highlights both progress and limitations in the application of confiscation, including extended confiscation. In some cases, courts have ordered firm measures to freeze and confiscate assets derived from money laundering activities; however, these procedures have often been hampered by difficulties in identifying the beneficial owners, the transnational nature of financial transactions, and the complexity of the evidence. These obstacles affect not only the duration of the proceedings but also the ultimate effectiveness of asset recovery.

An analysis of judicial practice, combined with an assessment of existing institutional mechanisms, reveals significant gaps in the enforcement of measures to recover criminal assets. In this context, it is necessary to strengthen institutional capacities, simplify procedures, and intensify international cooperation in order to accelerate the confiscation process and increase the effectiveness of anti-money laundering efforts.

Despite the legislative progress made, the effectiveness of mechanisms for the recovery of criminal assets in the Republic of Moldova remains contingent on how these instruments are applied in practice. In this regard, it is essential not only to analyse the regulatory framework but also to conduct a comparative assessment of national practices against international models, in order to identify existing gaps and establish the direction for reform.

Looking ahead, future developments will aim at a thorough harmonization of national legislation with the European Union acquis, as well as the strengthening of control mechanisms over financial entities. In particular, a revision of the legal framework for the recovery of criminal assets is envisaged, in line with the objectives set out in the National Accession Program for the period 2025–2029 [4].

Discussions and results obtained. Within the international framework for preventing and combating money laundering, the FATF expressly emphasizes the need for competent authorities to have a wide range of legal tools at their disposal for the freezing of criminal assets. These range from temporary, less intrusive measures to permanent provisional measures, with the selection to be made based on the specific circumstances

of each case. Such a flexible approach is essential to ensuring the effectiveness of the process of recovering proceeds of crime [5].

Precautionary measures, also referred to in international practice as provisional measures, are legal instruments through which competent authorities seek to prevent the risk of loss, disposal, or concealment of assets suspected of being derived from criminal activities. They are eminently preventive in nature, intended to preserve the assets until the conclusion of criminal proceedings, so that, in the event of a conviction or forfeiture order, the effective recovery of the value of the assets is possible.

Under national law, these measures are governed by the Criminal Procedure Code and consist primarily of the seizure of movable and immovable property. Their purpose is to prevent the concealment, damage, disposal, or removal of property subject to special or extended forfeiture, as well as to ensure the enforcement of fines or the compensation for damages caused by the offense. It is important to emphasize that precautionary measures are not reparatory in nature and do not permanently affect property rights, but merely temporarily restrict the exercise of such rights until the final resolution of the case.

A key factor in the application of these measures is the timing of their imposition. Premature imposition may compromise the effectiveness of the investigation by alerting the persons concerned and facilitating the concealment of assets, while delay may lead to their loss. In practice, the measures are frequently ordered at key stages of the criminal investigation, such as during searches, wiretaps, or arrests, to maximize operational efficiency.

For the imposition of protective measures, certain fundamental conditions must be met: the existence of a reasonable risk that the assets will be concealed or disposed of, and the fact that the assets are subject to forfeiture or may be used to secure the financial obligations arising from the offense. Furthermore, legal doctrine emphasizes the importance of respecting the principle of proportionality, which requires that the measure be limited to the estimated value of the damage and not impose an excessive restriction on the right to property. Failure to comply with this principle may lead to unjustified interference, especially in situations where the measures are maintained for extended periods or target assets whose value significantly exceeds the estimated damage [6].

The application of precautionary measures in a transnational context raises numerous difficulties, stemming from the lack of a unified regulatory framework, differences between national legal systems, and limitations on judicial review. These issues are also illustrated in the case law of the European Court of Human Rights, including in the case of Amerisoc Center S.R.L. v. Luxembourg [7], where it was found that international cooperation mechanisms may affect fundamental rights when judicial review is insufficient. The court emphasized the need to ensure a genuine balance between the effectiveness of combating financial crime and the protection of property rights, as well as the importance of having effective avenues for challenging the measures ordered.

A central tool in the process of recovering criminal assets is the freezing of funds, which aims to temporarily block suspicious assets to prevent their transfer or concealment. Although it produces effects similar to seizure, freezing is distinguished by its legal nature, being, as a rule, an administrative or operational measure of an urgent and temporary nature, often applicable without a prior criminal conviction.

In practice, the distinction between freezing and seizure is not always clear, and these measures are sometimes confused. However, the fundamental difference lies in the fact that freezing aims to immediately block suspicious transactions and is ordered

by administrative or financial entities, whereas seizure is a criminal procedural measure ordered by judicial authorities, with the aim of ensuring confiscation or compensation for damages.

The national legal framework defines freezing as the process of rendering criminal assets unavailable, which in itself entails the temporary prohibition of the transfer, destruction, conversion, disposal, or removal of criminal assets for the purpose of their recovery or the temporary assumption of administration or control over those assets [8].

At the international level, the freezing of assets is established as a priority measure in the FATF Recommendations, which require states to adopt effective mechanisms for identifying, freezing, and confiscating the proceeds of crime—including without a prior criminal conviction—in order to prevent the concealment and transfer of illicit funds. Furthermore, the European Union's regulatory framework promotes the use of freezing as an autonomous tool, distinct from criminal seizure, with an emphasis on speed and cross-border cooperation.

In the context of virtual assets, the application of freezing and seizure measures presents distinct challenges. Unlike traditional bank funds, cryptocurrencies are stored in digital wallets controlled by private keys, making it impossible to freeze them without actual access to those keys. Furthermore, the use of decentralized platforms and "mixing" or "tumbling" services hinders the traceability of funds and reduces the effectiveness of traditional freezing measures. Under these circumstances, the regulation and supervision of virtual asset service providers (VASPs) and the ability to utilize blockchain analysis tools become essential.

The comparative analysis highlights relevant practices: in France, financial authorities may order the immediate freezing of suspicious transactions; in Italy, asset freezing is used extensively in the fight against organized crime, including without a prior conviction; in Germany, financial institutions have strict obligations to suspend suspicious transactions; and in the United Kingdom, rapid administrative mechanisms allow for the freezing of funds based on reasonable suspicion, although this practice raises issues regarding proportionality.

Despite its effectiveness, the application of asset freezing poses significant challenges, such as confusion regarding the applicable legal regimes, the excessive duration of the measures, difficulties with international recognition, and the impact on the rights of bona fide third parties. In this context, European case law emphasizes the need to respect essential safeguards: legality, proportionality, and the existence of effective judicial review.

In conclusion, asset freezing and precautionary measures are indispensable tools for the recovery of criminal assets in money laundering cases. Their effectiveness, however, depends on a clear delineation of legal regimes, proportional application, and the strengthening of international cooperation mechanisms, with a view to ensuring a balance between the need to combat financial crime and respect for fundamental rights.

In continuing the analysis of mechanisms for the recovery of criminal assets, security measures in criminal matters play a central role, consisting primarily of special forfeiture and extended forfeiture. Their purpose is to eliminate the social danger posed by assets derived from illicit activities, as well as to prevent their reuse for criminal purposes, particularly in the context of money laundering.

From a doctrinal perspective, confiscation is characterized as a sui generis criminal law sanction with a pronounced preventive nature. As Bogdan Camelia emphasizes, this measure is not fully equivalent to a criminal penalty, as it does not aim to punish the

offender but rather to eliminate the illicitly obtained financial advantage. Consequently, confiscation is not absolutely contingent upon the imposition of a penalty and does not fully fall under the principle of the personal nature of criminal liability, as it may also affect third parties under certain conditions provided by law [9].

In the context of money laundering, confiscation takes on strategic importance, as the primary purpose of this offense is to integrate criminal proceeds into the legal economic circuit. Thus, depriving the offender of the benefits obtained becomes essential for the effectiveness of criminal policies. In this context, several forms of confiscation can be distinguished:

– *Special confiscation*, which targets property used to commit the crime, property intended for its commission, or property resulting directly from criminal activity. In money laundering cases, this is frequently applied to sums of money, bank accounts, or property acquired with illicit funds;

– *Extended confiscation*, which allows for the confiscation of additional assets, characteristic of certain categories of crimes and subject to specific conditions established in the Criminal Code. This form is particularly relevant in complex money laundering cases, where the trail of funds is difficult to prove directly;

– *Non-conviction-based confiscation*, applicable in exceptional situations, such as the death of the defendant, flight from prosecution, or the impossibility of holding the defendant criminally liable. This form reflects modern trends toward streamlining asset recovery but raises sensitive issues regarding respect for fundamental rights.

An emerging challenge in the enforcement of asset forfeiture measures is the recovery of virtual assets. Their technological characteristics—pseudonymity, high mobility, and the ability to be transferred instantly across jurisdictions—create significant difficulties in establishing a link between the asset and criminal activity, as well as in the effective enforcement of asset forfeiture measures. In practice, these difficulties are amplified by the use of non-custodial wallets, decentralized finance (DeFi) protocols, and anonymization technologies, which can hinder the identification of the assets' beneficial owner. Under these circumstances, confiscation becomes dependent not only on traditional legal instruments but also on the technical capabilities of authorities to conduct blockchain analysis and cooperate with specialized private entities.

At the European Union level, the new regulatory framework on asset recovery, established by Directive (EU) 2024/1260, marks a significant step in the harmonization of national laws. The directive establishes minimum rules regarding the identification, tracing, freezing, confiscation, and management of criminal assets, strengthening cooperation among Member States and enhancing the effectiveness of asset recovery mechanisms. Furthermore, the directive emphasizes the efficient administration of frozen assets to prevent their depreciation until their final disposal.

A distinct and relevant model for comparative analysis is the civil forfeiture mechanism, established in the legal system of the United States of America. Unlike the continental European model, where confiscation is, in principle, contingent upon a criminal conviction, this mechanism allows for the confiscation of assets through independent civil proceedings directed against the property (in rem), rather than against the individual.

Thus, authorities may order the forfeiture of assets suspected of deriving from criminal activities, including money laundering, without the need to establish a person's criminal guilt. This approach facilitates the recovery of assets in situations where the perpetrators cannot be identified, are deceased, or evade criminal prosecution, thereby contributing to the increased effectiveness of mechanisms to combat financial crime.

However, *civil forfeiture* [10] is subject to substantial criticism, particularly from the perspective of the protection of fundamental rights. The lower standard of proof and the possibility of reversing the burden of proof can lead to situations where property owners are required to demonstrate the lawful nature of their assets. For this reason, legal doctrine emphasizes the need to establish adequate procedural safeguards to prevent potential abuses and ensure respect for property rights.

Compared to the approach promoted at the European Union level, where confiscation without conviction is permitted under strict conditions and accompanied by robust procedural safeguards, the American model is characterized by greater flexibility, but also by increased risks regarding the balance between efficiency and the protection of individual rights.

In a European comparative context, a diversity of approaches is observed in the application of forfeiture in money laundering cases.

In Italy, forfeiture is used extensively in the fight against organized crime, including through preventive forfeiture mechanisms, applicable even in the absence of a criminal conviction, where the illicit origin of the assets is reasonably demonstrated.

In France, authorities have effective confiscation tools, supported by advanced asset management mechanisms, which contribute to increasing the asset recovery rate.

In Germany, the reform of confiscation legislation has strengthened the possibility of extended confiscation and simplified procedures for recovering criminal assets.

In the United Kingdom, civil recovery mechanisms allow for the confiscation of assets based on the civil standard of proof, which facilitates asset recovery in complex money laundering cases but raises concerns regarding procedural safeguards.

Despite the progress made, the application of confiscation in money laundering cases faces multiple challenges. These include the difficulty of proving the link between assets and criminal activity, the use of unregulated structures and intermediaries to conceal ownership, as well as the transnational nature of financial flows. These difficulties are exacerbated in cases involving virtual assets, where the trail of funds can be fragmented through multiple rapid transactions conducted on platforms located in different jurisdictions or even within decentralized ecosystems lacking an identifiable legal entity. In such situations, identifying the beneficial owner and proving the illicit origin of the funds become considerably more complex. Furthermore, issues arise regarding the protection of property rights and the rights of bona fide third parties, which necessitates rigorous scrutiny of the proportionality of the measures ordered.

An analysis of national practice reveals significant difficulties in investigating and concluding money laundering cases, particularly in situations where the predicate offense is not identified or cannot be proven with sufficient clarity. Under these circumstances, only a small number of cases reach the courts, and the proportion of criminal assets that are actually subject to confiscation proceedings remains limited.

The results of national money laundering risk assessments highlight that one of the main difficulties in combating money laundering is identifying and proving the predicate offense. In the absence of establishing the illicit source of the funds, the criminal prosecution process is often hampered, which affects both the prosecution rate and the effectiveness of measures to recover criminal assets.

This approach indirectly reflects a limited capacity to investigate money laundering independently, as well as difficulties in criminalizing acts committed by third parties who are not directly involved in the commission of the predicate offense. Consequently, the effectiveness of confiscation mechanisms is compromised, as the absence of a conviction

or clarification of the origin of the assets reduces the possibility of applying asset recovery measures.

In this context, there is a clear need to strengthen institutional capacities and develop evidentiary mechanisms tailored to the specific nature of money laundering offenses, including in cases where such offenses are investigated independently. Such an approach would contribute to increasing the efficiency of the process of recovering criminal assets and to aligning national practice with international standards in this area.

Specifically, in the case of the Republic of Moldova, strengthening the regulatory and institutional framework regarding confiscation is a priority in the context of alignment with European and international standards. The effective implementation of confiscation mechanisms, including extended ones, as well as the development of institutional capacities to identify and administer criminal assets, are essential for increasing the effectiveness of the fight against money laundering.

In conclusion, confiscation is a fundamental tool in the process of recovering criminal assets, playing a decisive role in deterring and combating money laundering. Its effectiveness depends on the existence of a coherent legal framework, the uniform application of rules, and the balance between the need to protect the public interest and respect for fundamental rights.

In the same vein, given the transnational nature of money laundering, the recovery of assets used in or derived from this crime cannot be effectively achieved without robust, flexible, and results-oriented international cooperation. In this regard, international standards, particularly those promoted by the FATF, highlight the need to develop cooperation mechanisms that go beyond excessive formalism and allow for rapid intervention to prevent the removal or concealment of assets.

Thus, the effectiveness of asset recovery depends directly on the ability of states to act on the basis of the principle of reciprocity, to initiate proactive exchanges of information, and to use the most appropriate legal and operational tools depending on the specifics of each case. In particular, informal cooperation—based on the operational exchange of information between competent authorities, such as law enforcement agencies, financial intelligence units, and judicial authorities—plays a decisive role in the early stages of investigations, contributing to the rapid identification and location of criminal assets.

In the case of virtual assets, international cooperation takes on an additional dimension, requiring not only collaboration among authorities but also the involvement of virtual asset service providers, exchange platforms, and other digital intermediaries. The lack of uniform global regulations and differences in approach across jurisdictions can create loopholes that criminals exploit to conceal and transfer assets.

At the same time, the use of specialized international networks [11], such as those of the Criminal Assets Recovery Agency, as well as the involvement of existing global cooperation mechanisms, facilitates the exchange of information and increases the success rate of asset recovery proceedings. Practical experience shows that leveraging informal channels before initiating formal mutual legal assistance procedures helps in drafting better-founded and more effective requests.

On the other hand, formal cooperation remains indispensable, as it is necessary to establish clear, swift, and efficient procedures for the execution of mutual legal assistance requests, including regarding the recognition and enforcement of provisional measures and confiscation orders. In this context, it is essential that states have legal mechanisms in place to allow for the enforcement of foreign judgments without the need to fully repeat the proceedings on the merits, limiting review to issues of legality, respect for the

right to a fair trial, and the enforceability of such judgments.

In conclusion, strengthening international cooperation—both formal and informal—is an essential prerequisite for improving the efficiency of asset recovery in money laundering cases. An integrated approach, based on flexibility, foresight, and inter-agency coordination, is essential to prevent jurisdictions from being used as safe havens for illicit assets and to ensure an effective global response to financial crime.

Beyond the stages of identification, freezing, and confiscation, the true effectiveness of mechanisms for recovering criminal assets in money laundering cases is reflected in how these assets are managed, realized, and reintegrated into the legal economy. In this regard, international standards emphasize the need to establish effective mechanisms for managing frozen, seized, or confiscated assets throughout the proceedings, so that their value is preserved and utilized appropriately.

The administration of frozen assets must be carried out based on transparent criteria and through specialized structures or authorized professionals, to prevent their depreciation and ensure their effective utilization. In the context of money laundering, where assets can take various forms (financial funds, movable or immovable property, equity interests), flexibility in management and disposal strategies becomes essential.

At the same time, the use of confiscated assets must be guided by the principles of transparency, accountability, and the public interest. Allocating these assets to fund law enforcement agencies, the justice system, or social programs contributes not only to strengthening institutional capacity but also to increasing public confidence in the effectiveness of mechanisms for combating financial crime. In this regard, confiscation should not be viewed as a revenue-generating tool, but rather as a mechanism for restoring social balance and eliminating the economic benefits of crime.

At the international level, the final stage of asset recovery frequently involves the return or sharing of confiscated assets among the states involved in investigating and resolving the case. This requires not only the existence of appropriate legal mechanisms but also effective cooperation between jurisdictions, including through the conclusion of bilateral or multilateral agreements. In the context of money laundering, where financial flows cross multiple jurisdictions, such cooperation is indispensable for ensuring the efficient and equitable recovery of assets.

Last but not least, preserving the value of assets throughout the proceedings is an essential prerequisite for effective recovery. This requires the adoption of appropriate interim management measures, including the timely disposal of perishable or depreciating assets, as well as the efficient management of complex assets.

Conclusions. The research highlights that the recovery of criminal assets in money laundering cases is an essential pillar of modern policies to combat financial crime, going beyond a strictly punitive dimension and integrating into a comprehensive approach focused on prevention, efficiency, and the restoration of social balance.

The study emphasizes that the recovery of criminal assets is an essential element of combating money laundering, but the effectiveness of this process depends not only on the regulatory framework but especially on its practical implementation. In the case of the Republic of Moldova, the analysis demonstrates the existence of a legal framework that is relatively aligned with international standards, but also significant gaps at the institutional, operational, and judicial levels.

Above all, it has been found that the effectiveness of asset recovery mechanisms depends crucially on the existence of a coherent regulatory framework, aligned with international and European standards, as well as on the institutional capacity to implement

it. Recent developments, including those resulting from the AML 2024 Package [12], confirm the trend toward strengthening legal instruments for the identification, freezing, and confiscation of assets derived from criminal activity.

At the same time, the analysis highlights the importance of precautionary measures and asset freezing mechanisms as indispensable preventive tools for preserving the value of assets until the conclusion of judicial proceedings. Their application, however, must be carried out in strict compliance with the principles of legality and proportionality to avoid unjustified interference with property rights.

Furthermore, confiscation—in all its forms, including extended confiscation and confiscation without conviction—emerges as a strategic tool in combating money laundering, serving to eliminate the economic benefit of the crime. At the same time, comparative analysis demonstrates the existence of various models at the international level, each characterized by a different balance between efficiency and the protection of fundamental rights.

A key finding highlighted by the study is the transnational nature of money laundering, which calls for enhanced international cooperation, both through formal mechanisms and informal channels. The effectiveness of asset recovery is closely linked to the speed of information exchange, coordination between jurisdictions, and the ability to avoid fragmented procedures.

Furthermore, the research underscores that the final stage of asset recovery—the administration, disposal, and use of confiscated assets—is essential to ensuring the real impact of these mechanisms. The implementation of transparent and efficient asset management systems helps preserve their value and direct them toward public interest purposes, thereby strengthening public confidence in the justice system.

Regarding the Republic of Moldova, the results of the analysis indicate significant progress in aligning the regulatory framework with international standards; however, challenges remain regarding the uniform application of legislation, the identification of criminal assets, and the efficiency of recovery procedures. In this context, it is necessary to strengthen institutional capacities, develop appropriate evidentiary tools, and deepen international cooperation.

In particular, the research highlights that technological developments and the increasingly widespread use of virtual assets require a continuous adaptation of mechanisms for the recovery of criminal assets. The integration of digital analysis tools, the development of technical expertise among authorities, and the strengthening of the regulatory framework applicable to virtual asset service providers are becoming essential conditions for maintaining the effectiveness of the system for preventing and combating money laundering in the digital age.

Ultimately, the recovery of criminal assets in money laundering cases must be approached as an integrated process that combines legal, institutional, and operational dimensions. Only through such an approach, based on regulatory consistency, international cooperation, and respect for fundamental rights, can the real effectiveness of the fight against money laundering and the strengthening of the rule of law be ensured.

Bibliographical references

1. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations, updated October 2025. Available: FATF Recommendations 2012.pdf.coredownload.inline.pdf. (Accessed 29.03.2026).
2. Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April

2024 on Asset Recovery and Confiscation. Available: Directiva (UE) 2024/1260 a Parlamentului European și a Consiliului din 24 aprilie 2024 privind recuperarea și confiscarea activelor. (Accessed 30.03.2026).
3. Criminal Procedure Code of the Republic of Moldova No.122 of 14.03.2003. Available: CPP122/2003. (Accessed 01.04.2026).
4. Law No.308/2017 on the Prevention and Combating of Money Laundering and Terrorist Financing. In: Official Gazette, No.58-66. Available: LP308/2017. (Accessed 27.03.2026).
5. Law No.48/2017 on the Criminal Assets Recovery Agency, Art. 10. In: Official Gazette, No.155-161. Available: LP48/2017. (Accessed 28.03.2026).
6. Cristinel Bogdan. The Legal Nature of the Confiscation Measure in Criminal Proceedings. July 1, 2015, p. 117. Available at SSRN: https://ssrn.com/abstract=3337733 or http://dx.doi.org/10.2139/ssrn.3337733.
7. Financial Action Task Force. Asset Recovery Guidance and Best Practices. FATF, Paris, 2025. Available: Asset-Recovery-Guidance-Best-Practices.pdf.coredownload.pdf. (Accessed 01.04.2026).
8. Financial Action Task Force. Recovering International Proceeds of Crime through Inter-Agency Networks, November 2023. Available: Recovering International Proceeds of Crime through Inter-Agency Networks. (Accessed 01.04.2026).
9. European Court of Human Rights, Amerisoc Center S.R.L. v. Luxembourg, No.001-237298, 2025. Available: AMERISOC CENTER S.R.L. c. LUXEMBOURG. (Accessed 02.04.2026).
10. Draft Law on the Use of Confiscated Assets for Social Purposes or in the Public Interest. Author: Ministry of Justice. Available: Parlamentul Republicii Moldova - Detalii materiale. (Accessed 28.03.2026).
11. Report on the Assessment of Money Laundering and Terrorist Financing Risks in the Republic of Moldova, 2025. Summary available: NRA_rezumat.pdf. (Accessed 28.03.2026).
12. National Risk Assessment of Money Laundering and Terrorist Financing Related to Virtual Assets and Virtual Asset Service Providers, December 2024, Chisinau. Available: NRA_FINAL_RO-Active-virtuale.pdf.
13. National Programme for the Accession of the Republic of Moldova to the European Union 2025–2029, Cluster II – Internal Market, Chapter 4 – Free Movement of Capital. Available: Programul Național de Aderare a Republicii Moldova la UE 2025-2029 | GUVERNUL REPUBLICII MOLDOVA. (Accessed 28.03.2026).
14. Sergiu Socevoi, Ion Moraru. Scientific paper: Application of Asset Seizure in Criminal Proceedings and the Protection of Property Rights, 2022. Available: 2022-aplicarea-sechestrului-in-cadrul-cauzei-penale-si-asigurarea-dreptului-de-proprietate.pdf. (Accessed 01.04.2026).
15. Considerations Regarding Civil Confiscation. Available: civil forfeiture | Wex | US Law | LII / Legal Information Institute. (Accessed 01.04.2026).
16. EU Legislative Package on Combating Money Laundering and Terrorist Financing, 2024. Available: Anti-money laundering: Combaterea spălării banilor: Consiliul adoptă un pachet de norme - Consilium. (Accessed 29.03.2026).

CZU: 343.1 **DOI: https://doi.org/10.5281/zenodo.20797202**

THE USE OF SPECIAL KNOWLEDGE IN CRIMINAL PROCESS: PRACTICAL NEEDS AND SOLUTIONS

Ion COVALCIUC,
PhD, Associate Professor,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Chief Prosecutor, Balti Municipality Prosecutor's Office,
Republic of Moldova
ORCID: 0000-0003-0692-8988

Abstract

Celerity represents one of the sine qua non conditions for the successful achievement of the purpose of the criminal process, as formulated in Art. 1 para. (2) of the CPP RM (Criminal Procedure Code of the Republic of Moldova). The purpose aims at protecting the person, society, and the state from crimes, as well as protecting the person and society from the illegal acts of persons with positions of responsibility in their activity related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to their guilt, and no innocent person is held criminally liable and convicted. Equipping the judicial bodies with more investigative tools evidently represents an efficient means in favor of the celerity of investigations.

In addition, remedying the legislative inconsistencies regarding the administration of special knowledge in the criminal process, as well as transforming this process into an effective tool for administering evidence in the criminal process, would represent an important step in this regard.

Keywords: criminal proceedings, criminal procedural law, medico-legal finding, expertise, technical-scientific finding.

UTILIZAREA CUNOȘTINȚELOR SPECIALE ÎN PROCESUL PENAL: NECESITĂȚI PRACTICE ȘI SOLUȚII

Abstract

Celeritatea reprezintă una dintre condițiile sine qua non pentru realizarea cu succes a scopului procesului penal, așa cum acesta este formulat în Art. 1 alin. (2) din CPP RM. Scopul vizează protejarea persoanei, societății și statului de infracțiuni, precum și protejarea persoanei și societății de faptele ilegale ale persoanelor cu funcții de răspundere în activitatea lor legată de cercetarea infracțiunilor presupuse sau săvârșite, astfel încât orice persoană care a săvârșit o infracțiune să fie pedepsită potrivit vinovăției sale, iar nicio persoană nevinovată să nu fie trasă la răspundere penală și condamnată. Dotarea organelor judiciare cu mai multe instrumente investigative reprezintă, evident, un mijloc eficient în favoarea celerității investigațiilor.

În plus, remedierea inadvertențelor legislative privind administrarea cunoștințelor speciale în procesul penal, dar și transformarea acestui proces în un instrument efectiv de administrare a probelor în procesul penal, ar reprezenta un pas important în acest sens.

Cuvinte-cheie: proces penal, lege procesual penală, constatare medico-legală, expertiză, constatare tehnico-științifică.

Introduction. In accordance with the provisions of Art. 2 of the CPC RM[1], the criminal process is regulated by the provisions of the Constitution of the Republic of Moldova, by the international treaties to which the Republic of Moldova is a party, and respective-

[1] Hereinafter the Criminal Procedure Code (CPC), Law of the Republic of Moldova No.122 of 14.03.2003 In: Official Monitor No.248-251/447 of 07.06.2003.

ly by the Criminal Procedure Code. As provided in Art. 1 para. (1) CPC RM, the criminal process represents the activity of the criminal investigation bodies and courts with the participation of the parties in the process and other persons, carried out in accordance with the provisions of the Criminal Procedure Code. The respective provisions indicate without the possibility of interpretation that legality is one of the basic principles of the criminal process, a principle expressly mentioned by the legislator in Art. 7 of the CPC RM. But beyond the indisputably positive aspects of the principle of legality, what we would like to draw attention to within this scientific endeavor relates to the possibility of using special knowledge in the criminal process, and a more applied way of using the principle of legality, so that it does not represent excessive formalism in the investigation process and, instead of contributing to the expeditious resolution of the criminal case, leads to the delay of investigations.

Methods and materials applied. Theoretical and normative material, and last but not least, relevant national and international jurisprudence were used in drafting the article. Also, during the study, several methods of scientific investigation specific to theory were applied, such as: the logical method, the comparative analysis method, the analytical method, etc. Last but not least, the empirical method was used selectively to determine the impact of the use of specialized knowledge in the criminal process on the celerity of investigations.

Purpose of the research. The analysis of the relevant criminal procedural normative framework and domestic jurisprudence in criminal matters, the way in which the criminal procedural law is understood and applied by the judicial bodies, especially the instruments applied by the legislator to include the procedural legal norms from other laws in the Criminal Procedure Code.

Discussions and results obtained. The evolution of the technological process in the recent period naturally cannot go unnoticed by criminal elements, and besides the fact that science provides criminal investigation bodies with new technical means intended for a more effective administration of evidence in the criminal process, it must also respond to the increasingly sophisticated methods used by criminals. Thus, if some time ago, the statement of the author N. Reabchin, that the specificity of papillary traces consists in the fact that they point directly to the "owner", who touched the object, meaning they indicate the specific person. The discovery of other traceological traces – footwear marks, means of transport, also requires the establishment of the person who used them. In the case of papillary traces, the directness logically results from their uniqueness – out of all the people on earth, there are not and have never been two persons with the same papillary traces [1, p.495]. At present, the situation can be totally different. For "if, aside from criminal technologies, the criminal, even using footwear, means of transport, or anything else to commit the crime, still has to be present at the place where the criminal act is committed, even if we were to admit that the traces at the scene are created only by mediate objects, the situation changes radically in the case of using informational technologies, technologies for which we could unhesitatingly affirm that there is no dimension of space, and not only that, but also of borders, domicile, etc. In the same register, for example, if the classic methods of distributing drugs, especially to end consumers, involved interaction in a certain environment, usually disapproved of by society on the one hand and under the scrutiny of law enforcement agencies on the other hand, and consequently recruiting potential clients being a challenge, then the new informational technologies, especially new communication applications, allow unnoticed access even in the safest environments from a social point of view" [2, p.140].

In another train of thought, the classic methods of committing even common law crimes have suffered lately as a result of the technologization of society, such as, for example, thefts committed through informational technologies, drug sales through mobile applications, as well as the speed with which new psychoactive substances appear on the market.

These being just a few of the contemporary objective conditions that involve the large-scale use of special knowledge in the criminal process, solving the tasks of the criminal process being practically impossible without this knowledge.

A brief historical foray into the matter denotes that, in fact, the problem of using special knowledge in the criminal process is not a new one, the demand for it increasing proportionally to the evolution of society and respectively to the evolution of the criminal phenomenon. Thus, some time ago, one of the founders of criminology, Hans Gross, mentioned "that I do not by any means pursue the goal of freeing the investigating judge, to a greater or lesser extent, from the support of competent persons: nothing could be more harmful than for the investigating judge not to know where the limits of his knowledge end; in this case, he would fall into an uninterrupted series of errors. But, if it is inconceivable that the investigating judge be as well informed in specialized matters as authorized experts, on the other hand, it is legitimate to demand that he knows in which situations he must resort to the help of specialists, whom exactly to choose, and what questions to ask" [3, p.3].

The need to use special knowledge in the criminal process was noticed with the formalization, or in other words, providing a scientific character to criminal investigations. At the same time, the way in which special knowledge is administered in the criminal process represents, in our opinion, the "cornerstone", as it can serve as an effective tool in investigating crimes where the circumstances of the case require it, or it can become a problem in itself when the administration of special knowledge in the criminal process is excessively formalized. In this sense, the author Packer H.L. highlighted:

a) *The Due Process Model*, when the basic priority lies in the adequate protection of the rights and freedoms of the person, a protection ensured by granting a maximum number of criminal procedural guarantees to the person defending themselves in the criminal process;

b) *The Crime Control Model*, when the focus is placed on protecting society and its members (real or potential victims) from crimes, and which allows, in order to achieve maximum effectiveness in combating crime, a substantial restriction of the rights and freedoms of the person.

Based on this conception, recognized as conceptual today, it can be stated that the basic elements, which are in continuous competition in criminal procedural policy, are, on the one hand, the full protection of human rights, and on the other hand, the fight against crime. The merit of author Packer H.L. is to be recognized in the fact that he demonstrated the impossibility of establishing a monopoly in this fight. The respective elements, although they are in a natural competition, constantly interact at the same time, determining each criminal procedural system to be in an eternal search for the balance needed by society [4, p. 57].

But, beyond the need to ensure that the rights and freedoms of the participants in the criminal process are not unjustifiably restricted, the average duration of the evidentiary procedures through which special knowledge is used in the criminal process of over a year [5], when it comes to expertise, and somewhat less, depending on the knowledge requested, when it comes to technical-scientific or medico-legal findings, certainly can-

not contribute to the celerity of investigations.

Although at first glance the stated problem does not have a legal character, according to criminal procedural provisions, as evidence in the criminal process, factual elements established including through the following means are admitted:

- The judicial expertise report;
- Technical-scientific and medico-legal findings.

What we will analyze next relates to the way in which, at present, the administration of certain evidence through the respective means is regulated, the interference between them, their impact, as well as their integration into the criminal procedural evidence.

With reference to the technical-scientific or medico-legal finding, Art. 139 para. (1) of the CPC RM provides for the possibility of ordering it in the event that there is a danger of the disappearance of some evidence or the modification of some factual situations and it is necessary to urgently explain some facts or circumstances of the case, the competence to order it belonging to the prosecutor, the criminal investigation body, the ascertaining body, or the court, which can use the knowledge of a specialist for this purpose.

While according to the provisions of Art. 142 para. (1) of the CPC RM, the judicial expertise is ordered in cases where specialized knowledge in the field of science, technique, art, craft, or other fields is necessary to establish, clarify, or evaluate circumstances that may have evidentiary importance for the criminal case. And according to the provisions of Art. 6 para. (1) point 12/1 of the Criminal Procedure Code, judicial expertise is understood as the scientific-practical research activity carried out within the criminal process, with the aim of finding the truth by conducting methodical research, with the application of special knowledge and technical-scientific procedures to formulate reasoned conclusions regarding certain facts, circumstances, material objects, phenomena and processes, the human body and psyche, which can serve as evidence in a judicial process.

The comparative analysis of the stated texts of law highlights, on the one hand, the legislator's option to include both the expertise report and the technical-scientific and medico-legal findings among the means of evidence in the criminal process, means whose list, as it results from the criminal procedural legislation, is a restrictive one [6, p.449], and on the other hand, that essentially the respective means of evidence do not differ, even if the legislator chose to define them differently. The differences between the expertise and the finding being rather related to the subjects, the conditions for ordering them, the people involved, etc. [7, p.65].

But, according to the provisions of Art. 6 point 12) of the CPC RM, a judicial expert is a qualified person who is authorized, according to the law, to perform expertise and formulate conclusions in the specialty in which they are authorized, regarding certain facts, circumstances, material objects, phenomena and processes, the human organism and psyche, and who is included in the State Register of Judicial Experts. So it is obvious that the institution takes on a profoundly formal character, as long as, besides qualifications, the person must be legally authorized to perform expertise, moreover, they must be registered, including in the State Register of Judicial Experts.

At first glance, the situation seems to be simpler in the case of specialists who, according to Art. 6 point 43) of the CPC RM, is – the person who thoroughly knows a discipline or a certain problem and is involved in the criminal process, in the manner provided by law, to contribute to establishing the truth. Thus, if the expert's involvement in the criminal process, besides the need to solve certain problems requiring special knowledge in certain fields, it is also necessary for the expert to meet some formal criteria. Furthermore, the recommendation of the Supreme Court of Justice No.38 of 2013, referring to

the provisions of Art.142-153 of the Criminal Procedure Code, suggests that an expertise cannot be ordered and performed until the start of the criminal investigation [8].

The mentioned aspects surely cannot contribute to the celerity of the investigations, and the deadlines for performing some categories of expertise only complicate this matter even further.

Consequently, what would be possible to achieve under the current criminal procedural framework, in order to avoid possible delays of the investigations where the need to use special knowledge arises within the criminal process, would be resorting to technical-scientific or medico-legal findings. Or, in other words, resorting to the knowledge of the specialist instead of calling upon the involvement of an expert.

At the same time, the respective solution cannot be used every time the need to use special knowledge arises in the criminal process. In this sense, the criminal procedural law expressly provides for situations in which the use of the specialist's knowledge instead of the expert's is not possible. For example, according to the provisions of Art. 143 para. (1) of the CPC RM, the expertise is ordered and performed, obligatorily, for the ascertainment of:

1. The cause of death;
2. The degree of severity and the character of bodily injuries;
3. The mental and physical state of the suspect, accused, defendant – in cases where doubts arise regarding their state of sanity or their ability to independently defend their legitimate rights and interests in the criminal process;

3/1. The mental and physical state of the person about whom it is claimed that acts of torture, inhuman or degrading treatments were committed;

4. The age of the suspect, accused, defendant, or injured party – in cases where this circumstance has importance for the criminal case, and the documents confirming the age are missing or present doubt;

4/1. The health condition of the suspect, accused, or defendant deprived of liberty – in cases of the presence of some indications of contracting a serious illness;

5. The mental or physical state of the injured party, the witness if doubts arise regarding their ability to correctly perceive the circumstances that are important for the criminal case and to make statements about them, if these statements will later be placed, exclusively or mainly, at the base of the decision in the given case.

From what has been mentioned, it certainly results that the legislator has conditioned the possibility of ascertaining the circumstances mentioned above, exclusively through a single evidentiary procedure – the expertise.

Furthermore, according to Art. 143 para. (1) point 6) of the CPC RM, the expertise is also mandatory in other cases when the truth cannot be established through other evidence. But, in our view, the respective provision does not exclude the possibility of using the knowledge of a specialist in the respective situations, the expertise becoming mandatory only subsidiarily, when other evidentiary procedures are inefficient. In another train of thought, according to Art. 97 of the CPC RM, in the criminal process, the following circumstances are ascertained through certain means of evidence:

1. The cause of death – through the medico-legal expertise report;
2. The existence, character, and degree of bodily injuries in criminal cases – through the medico-legal expertise report;
3. The incapacity of the person, at the time of committing the prejudicial act, to realize their actions or inactions or to direct them as a result of a mental illness or a temporary mental disorder, another health disorder, or debility – through the psychiatric

expertise report;

3/1. The contraction by the suspect, accused, or defendant of a serious illness that prevents the execution of the sentence – through the conclusions of the Consultative Medical Council of the National Administration of Penitentiaries or, as the case may be, through the judicial expertise report;

4. The incapacity of the witness to perceive and reproduce the circumstances, which are to be ascertained in the criminal case, as a result of a mental illness, a temporary mental disorder, another health disorder, or debility – through the psychiatric expertise report;

5. The attainment by the injured party, suspect, accused, defendant of a certain age, if this has importance in the case – through an age certificate, and in case of age-related incapacity – through the medico-legal or psychiatric expertise report.

The comparative analysis of the mentioned provisions denotes that even if there are certain differences, according to the criminal procedural provisions, the expertise is mandatory in the mentioned situations.

At the same time, the way in which the technical-scientific or medico-legal finding is ordered, as opposed to the expertise, denotes that the former practically do not involve the participation of the parties in this process. From the provisions of Art. 140 para. (1) of the CPC RM, the criminal investigation body, the prosecutor, the ascertaining body, or the court that orders the technical-scientific finding establishes its object, formulates the questions to be answered, and establishes the term in which the work will be performed. And according to the provisions of Art. 141 para. (1/1) of the CPC RM, the criminal investigation body, the prosecutor, the ascertaining body, or the court informs the parties that they have the right to get acquainted with the technical-scientific or medico-legal finding report, drafting a protocol in case of exercising this right.

In opposition to the aforementioned, the expertise implies not only the possibility of appointment on the initiative and at the expense of the parties according to the provisions of Art. 142 para. (2) of the CPC RM, but also their active participation in the process of appointing and performing the expertise.

Similarly, according to the provisions of Art. 144 para. (4) of the CPC RM, the suspect, the accused, or the injured party may request the criminal investigation body or, as the case may be, the prosecutor to order the performance of the judicial expertise. And the refusal to order the performance of the judicial expertise can be challenged in the manner established by the present Criminal Procedure Code.

According to the provisions of Art. 145 para. (1) of the CPC RM, the criminal investigation body, the prosecutor, or the court, in the event that it orders the performance of the judicial expertise, informs the parties in writing about the object of the judicial expertise and the questions to which the expert must give answers and explains to the parties that they have the right to make observations regarding these questions and to request their modification or completion, as well as the right to request the appointment of one expert recommended by each of them to participate in the performance of the judicial expertise.

Similarly, according to the provisions of Art. 151 para. (7) of the CPP RM, the judicial expertise report or the declaration of the judicial expert regarding the impossibility of presenting some conclusions, as well as the protocol of the expert's hearing, are communicated to the parties immediately, but no later than 3 working days from their receipt by the criminal investigation body, the prosecutor, or the court, and it is explained to them in writing that they have the right to give explanations, to make objections, as well as to request the submission of additional questions to the expert, the performance of a judicial expertise.

In another context, although apparently the mentioned evidentiary procedures are different, including from the perspective of the parties' participation, according to the provisions of Art. 139 para. (2) of the CPC RM, the technical-scientific and medico-legal findings can only be performed by a judicial expert registered in the State Register of Judicial Experts. Thus, on the one hand, when regulating the finding, the legislator operates with the notion of specialist (Art. 139 para. (1), 140 para. (2) of the CPC RM), and according to the provisions of Art. 87 para. (1) of the CPC RM, the specialist is the person called upon to participate in performing a procedural act in the cases provided by this Criminal Procedure Code, who is not interested in the results of the criminal process. The request of the criminal investigation body, the prosecutor, the ascertaining body, or the court regarding the calling of the specialist is mandatory for the manager of the enterprise, institution, or organization where the specialist works. On the other hand, however, the legislator conditions the performance of the finding by a judicial expert registered in the State Register of Judicial Experts according to the provisions of Art. 139 para. (2) of the CPP RM. Consequently, the difference between the mentioned evidentiary procedures becomes mostly formal, and the possibility of the judicial body to solve the problem of using special knowledge in the criminal process, by resorting to specialists from different fields without any formal criteria, is annihilated.

Moreover, the very difference between finding and expertise, as initially outlined by the legislator, also becomes difficult to apply; regardless of whether we are in the presence of a danger of the disappearance of some evidence or the modification of some factual situations for which an urgent explanation of some facts or circumstances of the case is necessary, the functional competence of solving these situations belongs to the expert. According to the provisions of Art. 139 para. (2) of the CPC RM, the technical-scientific and medico-legal finding can also be performed by a judicial expert registered in the State Register of Judicial Experts. In other words, regardless of the form of administering special knowledge in the criminal process, expertise or finding, the only subject through whom the evidentiary procedure can be carried out is the expert. The problem becomes all the more complicated as, regardless of the form, the research is carried out by the same subject, and as we mentioned above, the average term for performing expertise is one to the detriment of the celerity of investigations.

In another train of thought, the question arises about the rationale of using two forms of administering special knowledge from the same subject. The question is all the more current as, according to Art. 141 para. (2) of the CPC RM, if it is found that the technical-scientific or medico-legal report is incomplete or its conclusions are not accurate, the performance of a judicial expertise is ordered, both activities being performed by the person with the same abilities – the expert.

The respective legislative provisions are to be considered by relating them to the provisions of Art. 89 para. (1) point 5) of the CPC RM, according to which, a person cannot take part in the process as an expert if they have participated as a specialist in this process, except for the cases of participation of the forensic doctor in the external examination of the corpse and the cases of participation of subject matter specialists in the investigation of explosions and the dismantling of explosive devices.

In fact, the respective approach departs from the initial approach in this matter which provided that the technical-scientific finding is usually performed by specialists working in the criminal investigation body. It can also be performed by specialists working within other bodies, as well as by other specialists.

Last but not least, although the criminal procedural legislation provides for the pos-

sibility of the participation in the criminal process of both the expert and the specialist, as different subjects, and according to the provisions of Art. 87 para. (1) of the CPC RM, the specialist is the person called upon to participate in performing a procedural act in the cases provided by the Criminal Procedure Code, who is not interested in the results of the criminal process. The request of the criminal investigation body, the prosecutor, the ascertaining body, or the court regarding the calling of the specialist is mandatory for the manager of the enterprise, institution, or organization where the specialist works. And according to para. (5) point 6) of the same article, the specialist is obliged to make conclusions of technical-scientific or medico-legal finding. The legislator, as we mentioned above, expressly provided according to the provisions of Art. 139 para. (2) of the CPC RM, the possibility of performing the finding only by the expert.

Conclusions. Reiterating what is mentioned in Art. 1 para. (1) of the CPC RM, according to which the criminal process represents the activity of the criminal investigation bodies and courts with the participation of the parties in the process and other persons, carried out in accordance with the provisions of the Criminal Procedure Code. Activity which according to the provisions of para. (2) of the same article has the purpose of protecting the person, society, and the state from crimes, as well as protecting the person and society from the illegal acts of persons with positions of responsibility in their activity related to the investigation of alleged or committed crimes, so that any person who has committed a crime is punished according to their guilt and no innocent person is held criminally liable and convicted.

We consider it necessary to mention that achieving the purpose of the criminal process would be, if not impossible, then at least difficult to achieve in the absence of legislative provisions that would allow the use of multiple investigative tools, including alternative ones, for administering evidence in the criminal process.

At the same time, it is obvious that the purpose of the criminal process can be achieved also to the extent that the criminal procedural legislation favors the celerity of the investigations, a celerity that can certainly be much more easily achieved when inconsistencies such as those mentioned above are remedied.

Bibliographical references

1. Ryabkin H. Criminalistics. Moscow State University. Moscow: 1980, p.495.
2. Covalciuc I. The Crime Scene: Challenges and Solutions. In: Romanian Journal of Criminalistics, No.2, 2023, p.140.
3. Gross H. Criminal Investigation: A Practical Handbook for Magistrates, Police Officers and Lawyers. Translated and edited by John Adam and J. Collyer Adam, A. Krishnamachari, 1906. 1081 p.
4. Packer H.L. Two Models of the Criminal Process. In: University of Pennsylvania Law Review. Vol. 113. November 1964. No. 1. P. 1. In: Golovko L. and others. Course of Criminal Process. Statut Publ. Moscow, 2017. 1280 p.
5. Survey conducted on a sample of 80 prosecutors and criminal investigation officers.
6. Neagu I., Damaschin M. Treatise on criminal procedure. Special Part. In light of the new Criminal Procedure Code. Universul Juridic Publ. Bucharest, 2015. 676 p.
7. Covalciuc I. The medico-legal finding in the criminal process. In: Journal of the Prosecutor's Office, No.6/2020, p.65.
8. Recommendation of the Supreme Court of Justice No.38 of 2013. Available: http://jurisprudenta.csj.md/search_rec_csj.php?id=60 (accessed 08.02.2026).

UDC 316.624:343.9(477) **DOI: https://doi.org/10.5281/zenodo.20797313**

CRIME IN THE CONTEXT OF ARMED CONFLICT: A SOCIOLOGICAL ANALYSIS OF CHANGES IN THE STRUCTURE OF CRIMINAL OFFENSES

Oleksandra PTASHNYK,
PhD Candidate, Associate Professor,
Acting Head, Department of Law,
Academician I.M. Lutskyi, King Danylo University,
Ivano-Frankivsk, Ukraine
ORCID: 0000-0002-1529-2443

Abstract

This article presents a comprehensive sociological analysis of how crime has changed in Ukraine during the Russian Federation's full-scale armed aggression. Using statistical data from the Office of the Prosecutor General (2021-2025), it examines shifts in the structure of criminal offenses. The author finds that the war has strongly triggered "social anomie" and led to a sharp increase in serious and especially serious crime, such as war crimes, crimes against national security, and violations of military discipline.

The study highlights specific sociological factors contributing to rising crime rates, including: economic deprivation, mass victimization, and psychological trauma (PTSD). It also focuses on the aggressor's "criminal activism", which includes identocidal and urbicidal acts. The paper explores how organized crime adapts to martial law by shifting to digital methods and corrupting the distribution of humanitarian resource.

The increase in military offenses among the Defense Forces reflects psycho-emotional exhaustion, which calls for new social support models, not only more repressive measures. The conclusions emphasize the need to adopt transitional justice, an approach that balances the punishment of offenders with the reintegration of people from de-occupied territories. After the war, new problems, such as proliferation of illegal weapons and violent behavior, will require a scientifically grounded strategy for society's rehabilitation.

Keywords: martial law, crime structure, sociology of deviance, social anomie, criminal actionism, war crimes, transitional justice, national security, collaboration, identicide.

CRIMINALITATEA ÎN CONTEXTUL CONFLICTELOR ARMATE: O ANALIZĂ SOCIOLOGICĂ A SCHIMBĂRILOR ÎN STRUCTURA INFRACȚIUNILOR PENALE

Abstract

Articolul prezintă o analiză sociologică comprehensivă a transformărilor criminalității în Ucraina în perioada agresiunii armate la scară largă a Federației Ruse. Utilizând date statistice ale Oficiului Procurorului General (2021-2025), studiul examinează modificările survenite în structura infracționalității. Autorul susține că războiul a intensificat semnificativ „anomia socială" și a determinat o creștere accentuată a infracțiunilor grave și deosebit de grave, precum crimele de război, infracțiunile contra securității naționale și încălcările disciplinei militare.

Studiul evidențiază factorii sociologici specifici care contribuie la creșterea ratei criminalității, inclusiv deprivarea economică, victimizarea în masă și trauma psihologică (PTSD). De asemenea, acesta se concentrează asupra „activismului criminal" al agresorului, care include acte de identocid și urbicid. Articolul analizează modul în care criminalitatea organizată se adaptează regimului legii marțiale prin trecerea la metode digitale și coruperea procesului de distribuire a resurselor umanitare.

Creșterea infracțiunilor militare în rândul Forțelor de Apărare reflectă epuizarea psiho-emoțională, ceea ce impune dezvoltarea unor noi modele de sprijin social, și nu doar aplicarea unor măsuri represive suplimentare. Concluziile subliniază necesitatea adoptării justiției tranzitorii — o abordare care echilibrează sancționarea infractorilor cu reintegrarea persoanelor din teritoriile deocupate. După război, noi provocări, precum proliferarea armelor ilegale și comportamentul violent, vor necesita o strategie fundamentată științific pentru reabilitarea societății.

Cuvinte-cheie: lege marțială, structura criminalității, sociologia devianței, anomie socială, activism criminal, crime de război, justiție tranzitorie, securitate națională, colaborare, identocid.

Introduction. The full-scale war launched by the Russian Federation against Ukraine has become not only a challenge to national security but also a powerful catalyst for fundamental changes in all social systems, particularly in the sphere of law and order. The armed conflict has transformed the nature of social danger, giving rise to new forms of crime and altering traditional forms of criminal activity. A sociological analysis of these processes reveals not only statistical trends but also profound shifts in social psychology, moral values, and mechanisms of social control. Research into these processes is critically important for developing transitional justice strategies and stabilizing the rule of law in the post-war period.

The object of the study is the state and structure of crime in Ukraine under martial law. The subject of the study is the sociological patterns of changes in types of offenses caused by the armed conflict.

The aim of the article is to conduct a comprehensive sociological analysis of the quantitative and qualitative transformations of crime in Ukraine during 2021-2025, to identify the key determinants of the criminalization of social relations, and to substantiate new models for combating crime in wartime conditions.

Methods and materials applied. The study's methods are based on sociological theories of anomie (É. Durkheim, R. Merton), the concept of "criminal actionism" (Y. Orlov), and statistical analysis of data from the Office of the Prosecutor General of Ukraine. It uses an interdisciplinary approach combining a criminological perspective with psychoanalytic analysis of collective trauma and resentment.

Discussions and results obtained. Academic research on crime in armed conflict has a solid theoretical foundation, but there is an urgent need to rethink approaches for modern warfare. Scholars such as O.M. Bandurka, V.V. Holina, Y.V. Baulin, V.M. Kuts, O.M. Dzhuzha, and A.P. Zakaliuk contributed to these foundations. However, most studies focused on crime prevention during normal (peacetime) conditions.

Contemporary researchers note that war has changed how academics approach their work and exposed problems in crime-prevention institutions. M.I. Kharvoniuk [8] observes that, recently, studies on the state of crime in Ukraine are rare. Many authors focus only on certain crimes, such as organized crime, corruption, or war crimes. Since 2020, general crime statistics have received little attention.

Researchers (O. M. Yurchenko, V. L. Grokholskyi, and others) focus on the evolution of this phenomenon and its ability to fill a "governance vacuum" amid the weakening of state institutions. At the same time, a comprehensive theoretical assessment of organized crime, specifically as a systemic threat under martial law and in the context of hybrid challenges, remains underdeveloped.

S.M. Alfiorov, V.S. Batyrhareieva, B.M. Holovkin, and others have addressed the criminological characteristics of theft and robbery. However, science now faces a new problem – the development of an effective mechanism to prevent property crimes committed specifically during wartime.

Although attention to crime committed by military personnel is growing, specialized monographic studies devoted exclusively to this type of crime in the context of full-scale aggression are limited.

Y.V. Orlov [3] holds a special place in the current literature. The author suggests using a "criminological lens" to explain aggression as "criminal performance" (actionism). He also analyzes Russian fascism with psychoanalytic methods, exploring collective trauma and resentment in war crimes.

Sources urge in-depth study of these areas: how to support transitional justice sci-

entifically; how to design wartime anti-crime strategies; analysis of identocide (destroying national identity) and urbicide as forms of the aggressor's crime; and how to align national laws (especially Article 438 Criminal Code of Ukraine) with the Rome Statute of the ICC.

Academic debate is now shifting. It moves from listing facts toward a systematic understanding of disorder in the anti-crime system. The search for new models to keep the rule of law is ongoing.

A full analysis shows that the crime situation has worsened a lot. There is a roughly 11% increase in reported crime. This needs closer study, since the data comes with fewer statistical sources (due to territory occupation) and mass emigration of over 7 million people.

Statistical reports from the Office of the Prosecutor General [5] from 2021 to 2025 allow a detailed analysis of crime trends in Ukraine. The full-scale invasion in 2022 marked a turning point in crime structure. Since 2021, registered offenses have risen sharply: from 321,443 in 2021 to 608,101 in 2025. The main changes were linked to martial law, which led to a spike in certain crime categories.

According to official data from the Office of the Prosecutor General [5], the crimes whose numbers have increased significantly are:

1. *Crimes against peace, the security of humanity, and the international legal order*: This is the category with the most explosive growth due to the mass registration of war crimes (Art. 438 of the Criminal Code of Ukraine). The number rose from 253 in 2021 to 62,128 in 2022 and remains at a high level (over 56,000 in 2025). The main increase comes from Article 438 (violations of the laws and customs of war), under which there were only 172 cases in 2021, while during the war, the figure ranges from 26,000 to 60,000 annually.

2. *War crimes*: A steady and significant annual increase is observed: 3,037 (2021) → 11,596 (2022) → 14,820 (2023) → 16,820 (2024) → 17,385 (2025).

3. *Crimes against national security*: Rose sharply in 2022 (17,422 cases) compared to 520 in 2021. Treason (Art. 111) rose from 208 in 2021 to 1,957 in 2022, staying above 1,000 per year later. Massive collaboration cases (Art. 111-1) started in 2022: 5,851 (2022); 3,207 (2023).

4. *Crimes against life and health*: The number of reported cases is steadily increasing, from 33,657 in 2021 to 85,422 in 2025.

Crimes whose numbers have decreased or shown unstable trends include:

1. *Property crimes*: In the first year of the full-scale invasion (2022), there was a significant decrease in reported thefts and robberies, to 113,137 cases compared to 158,729 in 2021. In 2023, there was a spike to 178,902 cases, but since 2024, a steady downward trend has been recorded, down to 89,150 in 2025.

2. *Crimes against public order and morality*: In 2022, the number fell by nearly half (to 3,603 from 5,985 in 2021). In 2023–2024, the figures returned to pre-war levels (around 5,000–5,900), but a slight decrease was again recorded in 2025.

3. *Environmental crimes*: After the war began, the number of reported cases decreased slightly compared to 2021 (5,416 cases) and fluctuates between 4,000 and 4,700 per year.

Thus, the period of martial law is characterized by a sharp increase in serious crimes directly related to the war (war crimes, treason, desertion), while traditional types of crime, such as property crimes, declined at the start of the war, then fluctuated. Based on an analysis of statistical reports for 2021-2025, several key factors can be identified as contributing to the unstable trend in property crime. It is important to note that the reports themselves are statistical tables and do not include a detailed textual analysis of the causes; therefore, the conclusions presented below are based on comparisons of figures across different categories of offenses.

The main factors explaining the fluctuations in the indicators include the following:

1. A *sharp shift in structure*: *"Traditional" thefts vs. Fraud*. The total number of property crimes was highly volatile, driven by opposing trends in the two main categories: thefts and fraud. Decline in physical thefts (Art. 185 CC of Ukraine): The number of reported thefts steadily and rapidly decreased throughout the entire war period. While 113,517 thefts were recorded in 2021, the number dropped to 65,498 in 2022 and fell to 28,416 cases by 2025. Explosive growth in fraud (Art. 190 CC of Ukraine): It was this type of crime that caused the spike in overall property crime statistics in 2023. In 2021, 23,847 fraud cases were recorded. In 2022, the figure rose to 32,086, and in 2023, it jumped to 82,609 cases. This is nearly four times higher than in the pre-war year. Such a surge in fraud is usually linked to the rise of cybercrime, "fundraising" schemes, and phishing, which intensified during the war.

2. *The effect of the first year of the war*. In 2022, there was a significant decrease in the total number of property crimes, to 113,137 (compared to 158,729 in 2021). This may be due to the inability to record crimes in the occupied territories and in active combat zones during the first months of the invasion. A significant decrease in robberies and muggings was also observed in 2022.

3. *A peak in 2023 and a subsequent decline*. In 2023, there was an anomaly, with a record high of 178,902 reported property crimes. This was driven by the aforementioned surge in fraud. However, a steady downward trend began as early as 2024 – 132,910 crimes; in 2025 – 89,150 crimes.

4. *Trends in Serious Property Crimes*. Crimes such as robbery and armed robbery showed a steady downward trend, which also influenced the overall curve: Robbery (Art. 186 CC) – from 4,846 in 2021 to 1,322 in 2025; Robberies (Art. 187 CC) – from 952 in 2021 to 310 in 2025.

The instability in the trend (a drop in 2022, a spike in 2023, and another drop in 2024-2025) is explained by the fact that traditional types of crimes (theft, robbery) were steadily declining, while white-collar crimes (fraud) experienced an anomalous spike in the middle of the war period, after which their numbers also began to decline.

An important sociological indicator is the sharp increase in absentia investigations (by 76%), which suggests that offenders are distancing themselves from the national justice system. Alongside this, there has been a decline in the effectiveness of crime detection (by 26%), which is a consequence of the excessive burden on the law enforcement system, which is forced to perform functions atypical for it (evacuation, recording of shelling).

War, as an extreme social condition, has created a specific environment of "social anomie" (according to É. Durkheim), where customary social norms and behavioral regulators lose their effectiveness. In this context, crime is transformed under the influence of a complex of interrelated determinants:

1. *Economic factors*: resource shortages and new vectors of self-interest.

– Macroeconomic instability caused by hostilities directly affects the crime situation.

– Inflation and unemployment: a sharp decline in purchasing power and the loss of income sources push marginalized segments of the population toward committing crimes of greed.

– The transformation of property crime: despite a decrease in "traditional" petty thefts (due to curfews and increased patrolling), a phenomenon of large-scale looting has emerged. The appropriation of property belonging to evacuees or objects damaged by shelling has become a serious challenge for the law enforcement system, requiring the strengthening of criminal liability for such acts under martial law.

2. *Psychological factors*: the destructive consequences of trauma.

– The psycho-emotional state of society is a critical determinant of violent crime.

– Mass victimization and PTSD: experiencing traumatic events, the loss of loved ones, and the loss of homes lead to the accumulation of internal aggression. Post-traumatic stress disorder (PTSD), without proper rehabilitation, becomes a catalyst for unmotivated aggression, which provokes an increase in violent crimes (bodily harm, domestic violence).

– Militarization of society: Access to firearms, the number of which in the hands of the population has grown exponentially, creates conditions for domestic conflicts to escalate into serious criminal offenses. The psychological threshold for using weapons in wartime is significantly lowered.

3. *Migration processes and demographic pressure*:

– Large-scale internal displacement of persons (IDPs) has radically altered the social landscape of regions, particularly in the West.

– Pressure on infrastructure and social control: an abnormally high population concentration in certain communities places an excessive burden on life-support systems, provoking social tension and domestic conflicts.

– The vulnerable situation of evacuees creates fertile ground for new forms of fraud (renting non-existent housing, pseudo-volunteering, and manipulation of social benefits). At the same time, the difficulty of identifying individuals within large migration flows creates a conducive environment for criminals to evade law enforcement.

The sociological and criminological dimension of armed conflict requires an in-depth study not only of the consequences, but also of the causes of the aggressor state's destructive actions. In this context, it is worth drawing on the concept of Y.V. Orlov [3], who defines the current war through the category of "criminal performance" or negative majoritarian actionism. The criminality of the occupying forces' actions goes beyond the classical understanding of wartime excesses (collateral damage) and becomes a deliberate instrument for manifesting their own identity. This process occurs through the aggressive denial and total destruction of "otherness" – the annihilation of everything that marks Ukrainian statehood, culture, and value choices.

The ideological and psychological foundation of such actions is the phenomenon of Russian fascism (Rashism). From the perspective of the sociology of deviant behavior, Rashism should be analyzed not merely as a political doctrine, but as a specific pathological state of mass consciousness. The fundamental basis of this condition is social resentment – a deep sense of envious hostility arising from an inferiority complex and society's inability to realize its own ambitions through constructive means. This destructive force, compounded by unresolved collective traumas of the past and the "phantom pains" of lost imperial grandeur, serves to morally legitimize violence in the eyes of Russian society.

Such social pathology, reinforced by state propaganda, inevitably gives rise to forms of criminal activity unprecedented in their cruelty and scale. Among the most destructive phenomena of this war, aimed not at military superiority but at the ontological destruction of the enemy, are:

– *Identocide*: is the systematic and deliberate eradication of any markers of national identity. This crime is carried out through a multi-vector mechanism: from the physical destruction of the intelligentsia and cultural bearers to the elimination of the Ukrainian educational and linguistic space in the temporarily occupied territories. The confiscation and destruction of historical literature, persecution for the use of national symbols, as well as the mass deportation of children for the purpose of their forced assimilation and ideological reprogramming, are direct acts of identocide aimed at interrupting the transmission of social experience to future generations.

– *Urbicide*: is the deliberate, systematic, and irreversible erasure of entire cities from the face of the earth. In the sociocultural dimension, a city is not merely a collection of infrastructure; it is the center of civilization, collective memory, social ties, and the economic potential of society. Consequently, the destruction of urban space is an act of total desocialization of the population. By turning cities into ruins, the aggressor seeks to destroy the very possibility of recreating social and cultural life in these territories, transforming them into "dead zones" incapable of resistance.

Organized crime is adapting to martial law to fill the "governance vacuum". Criminal groups are turning to high-tech methods, including cyber fraud disguised as fundraising for the Armed Forces of Ukraine. Corruption infiltrating the structures that manage humanitarian aid and defense resources poses a particular danger, undermining public trust in the state.

The rise in offenses among service members of the Ukrainian Armed Forces is an indicator of systemic problems: moral exhaustion, inadequate medical care, and shortcomings in commanders' leadership. Desertion and insubordination are often not manifestations of ill will, but reactions to excessive strain. This requires the state not only to impose sanctions but also to develop a system of military psychology and social support.

The central issue of the transition period is transitional justice. The main challenge is striking a balance between punishing the guilty and reintegrating those who found themselves under occupation. Necessary measures:

1. Developing a crime-fighting strategy adapted to wartime realities.
2. Introducing criminological analysis of regulatory acts to minimize corruption.
3. Clearly distinguishing between voluntary collaboration and the forced survival of the civilian population.

The armed conflict has caused a structural shift in crime, with crimes against peace, human security, and military discipline now dominating. Sociological analysis shows that wartime crime results from the combined effects of external aggression and internal social erosion. After the war, a surge in drug-related crime and violent offenses is predicted due to PTSD and the large number of weapons. Effective countermeasures require not only police work but also profound sociocultural rehabilitation of society.

Conclusions. The present study allows us to draw the following theoretical and practical conclusions:

1. The period from 2022 to 2025 is characterized by a critical shift in the structure of crime toward serious and particularly serious crimes. The dominant trend is the prevalence of offenses directly caused by the war: war crimes (Art. 438 of the Criminal Code of Ukraine), crimes against national security, and military offenses. The number of cases in these categories has increased by hundreds of thousands, if not millions, of times compared to the pre-war period.

2. The armed conflict has created a specific sociocultural environment where the main factors driving criminalization are economic deprivation (looting), psychological trauma (increased aggression due to PTSD), and migration processes (pressure on social control systems in western regions).

3. A sociological analysis of the actions of the occupying forces allows us to classify them as "negative actionism", where crime serves as a tool for the destruction of national identity (identocide) and urban space (urbicide). This requires not only a legal, but also a sociocultural assessment within the framework of an international tribunal.

4. Organized crime has demonstrated high flexibility, migrating into the digital sphere (cyber fraud under the guise of aid to the Armed Forces of Ukraine) and attempt-

ing to corrupt the sectors responsible for the distribution of humanitarian and defense resources.

5. The rise in cases of combat stress disorders and desertion is primarily a socio-psychological indicator of human resource depletion, which dictates the need to shift from purely repressive measures to the development of a system of psychological support and rotations.

6. Effective stabilization of the rule of law is impossible without implementing the concept of transitional justice. The key task is to strike a balance between punishing the guilty and reintegrating the population of de-occupied territories, while avoiding excessive stigmatization of the victims of the occupation.

Prospects for further research lie in the development of long-term plans for societal rehabilitation, as a surge in violent crime and illegal arms trafficking is expected following the end of active hostilities, driven by high levels of militarization and widespread psychological trauma.

Bibliographical references

1. Otsinka sytuatsii v kraini, dovira do sotsialnykh instytutiv, otsinka problem, shcho isnuiut v ukrainskomu suspilstvi (Lystopad 2025 r.). Evaluation of the Situation in the Country, Trust in Social Institutions, Assessment of Problems Existing in Ukrainian Society (November 2025). In: Analitychni zvity Tsentru Razumkova. Available: https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-sytuatsii-v-kraini-dovira-do-sotsialnykh-instytutiv-otsinka-problem-shcho-isnuiut-v-ukrainskomu-suspilstvi-lystopad-2025r. (Accessed 19.04.2026).
2. Yepryntsev P.S. Orhanizovana zlochynnist yak zahroza natsionalnii bezpetsi Ukrainy. Organized Crime as a Threat to the National Security of Ukraine. In: Prykarpatskyi yurydychnyi visnyk, 2025, No.6 (65), p.72-76.
3. Orlov Yu.V. Zlochynnist i protydiia ii v umovakh viiny: kryminalno-pravovyi ta kryminolohichnyi vymiry. Crime and Counteracting it in War Conditions: Criminal Law and Criminological Dimensions. Kharkiv: Pravo, 2023. 252p.
4. Pishchenko H.I., Lysenko A.O. Stan, struktura ta tendentsii koryslyvykh zlochyniv State, Structure and Tendencies of Acquisitive Crimes. In: Analitychno-porivnialne pravoznavstvo, 2025, No.1, p.645-650.
5. Pro zareiestrovani kryminalni pravoporushennia ta rezultaty ikh dosudovoho rozsliduvannia. On Registered Criminal Offenses and the Results of Their pre-trial Investigation. Official statistics of the Office of the Prosecutor General of Ukraine for 2021-2025. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2. (Accessed 19.04.2026).
6. Pro pravovyi rezhym voiennoho stanu. On the Legal Regime of Martial Law: Law of Ukraine No.389-VIII Dated 12.05.2015. In: Vidomosti Verkhovnoi Rady Ukrainy, 2015, No.28, Art. 250.
7. Toma M.H., Bodnaruk O.M. Protydiia zlochynnosti v umovakh viiny. Counteracting Crime in War Conditions. In: Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Ser.: Yurysprudentsiia, 2025, No.74, p.55-59.
8. Khavroniuk M.I. Zlochynnist v Ukraini u 2019-2024 rokakh. Crime in Ukraine in 2019-2024. In: Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia Pravo, 2025, Vol.89, Part 3, p.295-303.

CZU 343.85:351.74 DOI: https://doi.org/10.5281/zenodo.20797758

INTERVENTION TACTICS AND LEGAL RIGOR IN THE APPLICATION OF THE PROVISIONAL PROTECTION ORDER: COMPARATIVE STUDY ROMANIA – REPUBLIC OF MOLDOVA

Elena-Ana DUDA,
PhD, University Lecturer,
Department of Economic and Legal Sciences,
Faculty of Psychology, Behavioral and Legal Sciences,
"Andrei Saguna" University,
Constanta, Romania
ORCID: 0009-0005-5202-9467

Abstract

The Temporary Protection Order (TPO) is emerging as an essential legal and operational tool in the rapid intervention of the police in cases of domestic violence, located at the intersection between the protection of fundamental rights and respect for the inviolability of the home. The approach is based on a multidisciplinary perspective, which integrates legal analysis, police tactics and elements of criminology, in order to evaluate the effectiveness of this mechanism in Romania and the Republic of Moldova. The complexity of the operative decision regarding the entry into the home without a warrant is analyzed by reference to the existence of an imminent danger, as well as to the determining role of the Risk Assessment Form in the objectification of the intervention. The contributions of digital probation, especially Body-Cam systems, in consolidating the evidence and diminishing the dependence on the victim's statements, frequently influenced by psychological and social factors, are highlighted.

The examination of the judicial practice reveals the main vulnerabilities that lead to the rejection of the Temporary Protection Order, among which the restrictive interpretation of imminent danger, the insufficiency of the evidence and the deficiencies of motivation are distinguished. In parallel, the comparative analysis highlights the emerging role of electronic monitoring mechanisms and the need to standardize procedures between the two states, in the context of alignment with European standards. The effectiveness of the Temporary Protection Order depends crucially on the coherent integration of the legal framework, technology and professional skills of the police officer. The strengthening of this mechanism requires the continuous professionalization of the intervention and the development of evaluation and monitoring tools adapted to the dynamics of the phenomenon of domestic violence.

***Keywords**: temporary protection order, domestic violence, risk assessment, domicile inviolability, digital probation, body cam, electronic monitoring.*

TACTICI DE INTERVENȚIE ȘI RIGOARE JURIDICĂ ÎN APLICAREA ORDINULUI DE PROTECȚIE PROVIZORIU: STUDIU COMPARATIV ROMÂNIA – REPUBLICA MOLDOVA

Abstract

Ordinul de Protecție Provizoriu (OPP) se conturează ca un instrument juridic și operațional esențial în intervenția rapidă a poliției în cazurile de violență domestică, situat la intersecția dintre protecția drepturilor fundamentale și respectarea inviolabilității domiciliului. Abordarea este fundamentată pe o perspectivă pluridisciplinară, care integrează analiza juridică, tactica polițienească și elemente de criminologie, în vederea evaluării eficienței acestui mecanism în România și Republica Moldova. Complexitatea deciziei operative privind pătrunderea în domiciliu fără mandat este analizată prin raportare la existența unui pericol iminent, precum și la rolul determinant al Formularului de Evaluare a Riscului în obiectivarea intervenției. Sunt evidențiate

contribuțiile probațiunii digitale, în special ale sistemelor Body-Cam, în consolidarea probatoriului și în diminuarea dependenței de declarațiile victimei, frecvent influențate de factori psihologici și sociali.

Examinarea practicii judiciare relevă principalele vulnerabilități care conduc la infirmarea Ordinului de Protecție Provizoriu, între care se disting interpretarea restrictivă a pericolului iminent, insuficiența probatoriului și deficiențele de motivare. În paralel, analiza comparativă evidențiază rolul emergent al mecanismelor de monitorizare electronică și necesitatea standardizării procedurilor între cele două state, în contextul alinierii la standardele europene. Eficiența Ordinului de Protecție Provizoriu depinde, în mod esențial, de integrarea coerentă a cadrului legal, a tehnologiei și a competențelor profesionale ale polițistului. Consolidarea acestui mecanism presupune profesionalizarea continuă a intervenției și dezvoltarea unor instrumente de evaluare și monitorizare adaptate dinamicii fenomenului violenței domestice.

Cuvinte-cheie: ordin de protecție provizoriu, violență domestică, evaluarea riscului, inviolabilitatea domiciliului, probațiune digital, body-cam, monitorizare electronică.

Introduction. The tactical and legal dilemma of intervention in private space. Police intervention in cases of domestic violence configures, in the legal systems of Romania and the Republic of Moldova, an area of interference between two fundamental values: the effective protection of the person and the guarantee of the inviolability of the home. This tension is not a purely theoretical one, but is concretely manifested in operative activity, where decisions must be adopted quickly, under conditions of uncertainty and pressure. From a constitutional point of view, the inviolability of the domicile is expressly enshrined, in the sense that "domicile and residence are inviolable" [1, Art.27; 2, Art.52]. At the same time, the protection of life and physical integrity requires the prompt intervention of the authorities when there are indications of the existence of a real danger.

Domestic violence situations prominently highlight this normative duality. The police officer is faced with a complex operational dilemma, where inaction can lead to serious consequences, including loss of life, and unjustified intervention can attract legal liability. The risk assessment must be carried out in an extremely short time frame, based on often incomplete or contradictory information. Under these conditions, the decision to enter the home without a warrant is not the result of a certainty, but of a reasonable assessment of the factual situation. The constitutional framework, however, provides a basis for such interventions, by establishing expressly regulated exceptions. Thus, it is possible to derogate from the principle of the inviolability of the domicile "to remove a danger regarding the life, physical integrity or assets of a person" [1, Art.27 para. (2) lit. b); 2, Art.52 para. (2) lit. b)]. The application of these provisions, however, requires a contextual analysis, in which the police officer must determine whether the danger is sufficiently serious and imminent to justify interference with fundamental rights. The difficulty lies in the fact that, in many situations, the external signs of violence are absent or ambiguous, and the victim's silence can hide a state of intimidation or coercion.

The introduction of the Temporary Protection Order represents a legislative development designed to respond to these challenges. In Romanian law, the mechanism is regulated by Law No.217/2003 for the prevention and combating of domestic violence [3], and in the Republic of Moldova by Law No.45/2007 [4]. By means of this instrument, the policeman acquires the competence to order immediate protective measures, based on a standardized risk assessment, without the need for prior court intervention. This legislative solution reflects the need to adapt legal mechanisms to the specific dynamics of domestic violence, characterized by unpredictability and rapid escalation.

From an operational perspective, the Temporary Protection Order determines a significant transformation of the role of the police. The last one no longer acts exclusively as an executor of the law, but becomes a true risk assessor, being obliged to identify in-

dicators of danger even in the absence of obvious manifestations of violence. In practice, the victim's lack of reaction or denial of the facts cannot automatically be interpreted as the absence of risk, but must be analyzed in the context of the relationship of dependence or intimidation in which it may be. The jurisprudence of the European Court of Human Rights reinforces this approach, enshrining the positive obligation of the state to prevent serious violations of the right to life and integrity. The Court ruled that the authorities must adopt operative measures when "they know or should know about the existence of a real and immediate risk to the life of an identified person" [5, p. 3159]. This obligation requires a proactive approach, where intervention is not only conditional on the existence of certain evidence, but also on the reasonable assessment of the danger.

The dilemma of the intervention is thus outlined on two distinct but interdependent levels. On the one hand, non-intervention can attract the responsibility of the state for the lack of effective protection, given that positive obligations require the adoption of preventive measures. On the other hand, a disproportionate intervention, lacking evidentiary basis, may lead to the disputing of the ordered measures and to the individual liability of the agent. In order to reduce this tension, national legislations have introduced procedural mechanisms aimed at objectifying the police decision, among which the Risk Assessment Form occupies a central place. This tool allows the structuring of the decision-making process by identifying relevant risk indicators, such as antecedents of violence, explicit threats or the aggressor's access to lethal means. The rigorous documentation of these elements contributes not only to the substantiation of the ordered measure, but also to its support before the court. In addition, the use of modern technical means, such as Body-Cam systems, provides an additional dimension of objectivity, facilitating the administration of evidence and reducing the risk of contesting the intervention.

In this context, the activity of the policeman acquires a pronounced analytical dimension, in which risk assessment becomes the central element of the intervention. The balance between the protection of fundamental rights and the need for rapid intervention can only be achieved through a well-founded decision, supported by appropriate methodological tools and a rigorous interpretation of the applicable normative framework.

Methods and materials applied. The research is based on a multidisciplinary approach, in which the dogmatic legal analysis is correlated with elements specific to police tactics and with benchmarks from contemporary criminology. Such an approach allows capturing the analyzed phenomenon not only from the normative perspective, but also from the operational one, in which the police decision is influenced by contextual, dynamic and often unpredictable factors. In this sense, the scientific approach aimed not only to identify the applicable legal framework, but also to evaluate how it is translated into practice, in real intervention conditions.

The comparative method was the main tool of analysis, being used to examine the normative framework in Romania and the Republic of Moldova, especially with regard to the regulation of the Temporary Protection Order and the powers of the police in emergency situations [3, Art. 22/4; 4, Art. 12/1]. This method allowed the highlighting of significant convergences between the two legal systems, generated by the influence of European standards in the matter, but also the identification of nuanced differences in terms of the concrete application of the rules. The comparative analysis was not limited to the formal level of the legal texts, but also aimed at their functional dimension, namely the way in which the legal provisions are used in practice to manage risk situations.

Documentary analysis complemented this approach by examining both primary legislation and subsequent normative acts with direct relevance in the field of police inter-

vention. In this sense, operational instruments such as the Risk Assessment Form, regulated by MIA Order No.146/2018, as well as MIA Instruction No.42/2018 from the Republic of Moldova [6, Art.3; 9, p.22]. These documents reflect the tendency to standardize the intervention and reduce the decisional variability, by introducing some objective criteria for risk assessment. At the same time, they provide the police officer with a methodological framework that facilitates the substantiation of the operative decision and its justification before judicial review.

A distinct role in the research was played by the analysis of specialized literature, which provides theoretical support for the understanding of risk assessment mechanisms and the dynamics of domestic violence. Criminological studies highlight the existence of recurring behavioral patterns, which may indicate an increased risk of violence escalation. Thus, it was emphasized that "certain patterns of violent behavior are predictive indicators of the risk of lethality" [11, p.658-660]. The integration of these conclusions in the legal analysis allows overcoming a strictly normative perspective and contributes to the foundation of an intervention adapted to social realities.

The case study method was used to integrate into the analysis the standards developed in the jurisprudence of the European Court of Human Rights, as well as the practice of national courts. The ECtHR jurisprudence provides an essential interpretive framework in the matter of the state's positive obligations, establishing the limits and conditions under which the intervention of the authorities becomes necessary. In this sense, the standard according to which the authorities must act when they "know or should know the existence of a real and immediate risk" [10, p.3159] has been used as a benchmark in assessing the legality and appropriateness of police intervention. The casuistic analysis also allowed the identification of relevant jurisprudential trends, especially regarding the verification of the proportionality of the ordered measures and the validity of the risk assessment.

Overall, the methodology used allows an integrated approach to the analyzed phenomenon, in which the legal, operational and criminological dimensions complement each other. This perspective provides a solid basis for evaluating the mechanism of the Temporary Protection Order and for formulating relevant conclusions both theoretically and practically.

I. Home Invasion. Operational Risks and Legal Coverage. Entry into the home without the person's consent represents one of the most sensitive forms of state interference in the sphere of fundamental rights. Constitutionally, this right is explicitly enshrined, in the sense that "domicile and residence are inviolable" [1, Art.27; 2, Art.52], which imposes a high standard of protection. However, the same normative framework admits strictly determined exemptions, when it is necessary to "remove a danger regarding the life, physical integrity or assets of a person" [1, Art.27 para. (2) lit. b); 2, Art.52 para. (2) lit. b)]. This exception is the legal basis for police intervention in cases of domestic violence, where the danger is not always visible or immediately quantifiable. In practice, intervention is not based on absolute certainty, but on the evaluation of some indications that suggest the existence of an imminent risk. From this perspective, the institution of the state of necessity acquires particular relevance, as it allows the justification of a proportional interference in rights, in order to protect higher values, such as life or bodily integrity [13, p.45-47].

Beyond the legal dimension, home invasion involves a series of specific operative risks. Unlike the public space, the private environment is characterized by a high degree of uncertainty. The configuration of the home, the number of people involved, the exist-

ence of dangerous objects or the behavior of the aggressor, are elements that cannot be fully anticipated. This situation gives the aggressor an obvious tactical advantage, as he knows the space and can use this advantage unpredictably. Under these conditions, the intervention must be carried out in a careful balance between speed and caution. On the one hand, the delay in intervention can lead to the worsening of the situation, including the occurrence of serious injuries or the death of the victim. On the other hand, an insufficiently substantiated intervention can generate legal consequences, including the annulment of the obtained evidence. Therefore, the condition of the existence of some "fundamental indications" [5, Art.157] becomes essential. They must be based on objective elements, such as noises of violence, cries for help, information provided by witnesses or the history of interventions recorded in operational databases.

Another essential aspect is the delimitation of the purpose of the intervention. In practice, there is a risk of exceeding the legal limits, in situations where the intervention to stop an aggression is transformed into a general home inspection. However, such an unjustified extension may lead to the nullity of evidence, in accordance with the principle according to which "evidence obtained in violation of legal provisions is subject to the sanction of nullity" [14, p.102-104]. Therefore, the police action must remain strictly circumscribed to the purpose for which it was initiated. From a procedural point of view, the documentation of the intervention is a determining element of its validity. MIA Instruction No.42/2018 from the Republic of Moldova requires a detailed description of the circumstances that justified the entry without the tenants' consent, including the sensory perceptions of the policeman [9, p.22-24]. This requirement is not of a formal nature, but reflects the need to allow the subsequent verification of the legality of the intervention by the prosecutor or the court.

In tactical terms, the intervention requires the observance of some essential rules. The immediate separation of the parties, the elimination of the aggressor's access to dangerous objects and the securing of the space are measures that contribute to stabilizing the situation and preventing the escalation of violence. The specialized literature emphasizes that the intervention in the private space "presupposes the rapid assessment of risks and the adaptation of tactics to the concrete conditions of the intervention" [13, p.46].

Overall, home invasion should be understood not as a discretionary manifestation of state authority, but as an exceptional measure, justified by the need to protect fundamental values. The balance between the protection of rights and the need for intervention is achieved through strict compliance with legal conditions and rigorous documentation of the intervention.

II. The Risk Assessment Form: The Foundation of the Operative Decision. The Risk Assessment Form is the central element of the Temporary Protection Order mechanism, having the role of substantiating the police decision in an objective and verifiable way. In the absence of such an instrument, the intervention would depend exclusively on the subjective assessment of the agent, which would generate a high variability of decisions and affect the legal security of the measures ordered. The regulations expressly establish that "risk assessment is carried out by corroborating the victim's answers with the police officer's observations and existing data" [6, Art.3]. This wording highlights the complex nature of the assessment, which is not limited to taking statements, but involves an integrated analysis of the factual situation. The police officer must correlate the information obtained directly from the victim with objective elements, such as traces of violence, the behavior of the aggressor or the history of previous incidents. An essential aspect of the assessment is the identification of lethality indicators. Criminological studies have

shown that certain behaviors foreshadow the escalation of violence to extreme forms. Thus, "certain patterns of violent behavior are predictive indicators of the risk of lethality" [11, p.658-660]. These indicators include a history of violence, explicit death threats, attempted strangulation, or access to weapons.

In practice, one of the major difficulties lies in assessing situations where the victim minimizes or denies the violence. This behavior is frequently encountered in the context of abusive relationships, being determined by factors such as fear, economic dependence or social pressure. Under these conditions, the police officer cannot limit the assessment to the victim's statements, but must use all available elements to assess the level of risk.

The legislation of the Republic of Moldova attaches particular importance to the imminent nature of the danger, establishing that the intervention is justified in the case of the existence of an "imminent danger of repeating acts of violence or committing acts of serious violence" [4, Art.12/1]. This formulation requires a prospective approach, oriented towards the prevention of future risks, not only towards ascertaining the facts already produced.

From an evidentiary point of view, the Risk Assessment Form is the main document analyzed by the court in the procedure to confirm the Temporary Protection Order. The judicial requirements in this matter are high, with the courts rigorously verifying the proportionality of the measure and the validity of the assessment. In this context, any omission or error of judgment may lead to the annulment of the order.

The correlation of the form with other means of evidence, especially with digital probation, contributes to the consolidation of the ordered measure. The use of Body-Cam systems allows capturing the actual situation in real time, providing the court with an objective picture of the circumstances of the intervention. The regulations provide that the police can use technical means in the exercise of their duties [12, Art.31 lit. b)], which gives these records probative value. Overall, the Risk Assessment Form should not be seen as a simple administrative document, but as an essential intervention tool, which transforms the subjective assessment into a well-founded decision. The quality of its completion directly influences the effectiveness of the measure and its ability to withstand judicial review.

III. Technology in Support of Legality: Body-Cam and Video Recordings. The integration of portable audio-video recording systems, known as body-worn cameras, into police work, particularly in domestic violence interventions, marks a significant transformation in the way probation is administered in such cases. If, traditionally, these situations were characterized by a major dependence on the statements of the parties, often contradictory and influenced by emotional or contextual factors, the use of video technology introduces an element of objectivity that considerably reduces evidentiary uncertainty.

The recordings made by the Body-Cam systems capture the intervention in real time, providing a faithful representation of the dynamics of the conflict. This ability to directly capture reality gives these means a distinct probative value, as they are not subject to the same distortions as subsequent depositions. In this sense, it was noted that the video recordings constitute a stable factual support, capable of reflecting both the behavior of the aggressor and the state of the victim at the time of the intervention, thus contributing to the clarification of the factual situation [9, Art.2; 15, p.89].

The importance of these records becomes particularly evident in the context of the phenomenon of complaint withdrawal, frequently encountered in domestic violence cases. In many situations, the victim, under the influence of pressure exerted by the ag-

gressor or economic and emotional dependence, changes his statements or refuses to support them before the authorities. In such cases, the video recording made at the time of the intervention can constitute a decisive evidentiary element, as it captures the state of affairs prior to any subsequent influences.

From a legal point of view, these records are integrated into the category of material evidence, having a relative autonomy from the statements of the parties. The criminal procedural regulations allow the use of technical means of registration in the criminal process, establishing that they can constitute evidence to the extent that they are obtained under the conditions of the law [11, Art. 158/1]. Judicial practice confirms the fact that recordings made on the spot can substantiate protective measures, including in situations where the victim's statements are retracted later [10, p.22]. This characteristic contributes to strengthening the role of the state in protecting the public interest, especially in situations where the victim's vulnerability limits his ability to support the legal action.

In addition to the evidentiary value, the use of Body-Cam systems also has a significant impact on the dynamics of the intervention. Practice has shown that simply informing the people involved that the intervention is recorded can have an effect of discouraging violent behavior. The explicit announcement of the start of the registration, carried out in accordance with the internal regulations, contributes both to ensuring the transparency of the intervention and to respecting the right to private life [9, Art.5; 19, p.114]. At the same time, this approach has an immediate psychological effect, causing, in many situations, a reduction in aggression and facilitating conflict management. An additional advantage of these recordings is to capture the spontaneous reactions of the people involved. Elements such as tone of voice, gestures, emotional state or non-verbal reactions provide a complex perspective on the situation that cannot be fully reproduced by written statements. These details can be of particular importance in assessing the degree of danger and in assessing the credibility of statements, contributing to the formation of a complete picture of the context of the intervention.

However, the use of Body-Cam technology also involves a series of strict technical and procedural requirements. Data integrity and compliance with the chain of custody are essential conditions for the admissibility of evidence. Procedures typically provide for the automatic download of recordings to secure systems, without the possibility of intervention on the content by the operator. Any irregularity in this process may affect the authenticity of the evidence and may lead to their exclusion from the criminal process, in accordance with the rules on the administration of computer evidence [11, Art.158; 12, p.73].

In this context, technology should not be seen as a simple auxiliary tool, but as an integrated element of police intervention, which contributes both to increasing operational efficiency and to strengthening the legality of the actions undertaken. The use of Body-Cam systems determines an implicit standardization of professional conduct and reduces the risk of deviations, by increasing the degree of responsibility of the personnel involved. Overall, the audio-video recordings made during interventions represent an essential factor in the modernization of police activity. They contribute to increasing transparency, strengthening evidence and protecting the fundamental rights of the people involved. By integrating them into the mechanism of the Temporary Protection Order, a direct connection is made between the technological and the legal dimension of the intervention, for the benefit of a more effective protection of the victims and a rigorous application of the law.

IV. Analysis of judicial vulnerabilities. Reasons for invalidating the Temporary

Protection Order (TPO). The effectiveness of the TPO is subject to rigorous control in a relatively short time frame, namely in the phase of confirmation by the prosecutor and later by the court. This verification mechanism, although necessary to guarantee the legality and proportionality of the measure, frequently highlights a series of structural vulnerabilities that lead to the reversal of the order. The analysis of the recent judicial practice in Romania and the Republic of Moldova reveals the fact that the cancellation of the OPP does not occur, predominantly, as a result of the non-existence of the situation of violence, but due to some deficiencies in the legal and evidentiary substantiation of the intervention [12, p.73; 14, pp.102-104].

A first major vulnerability is related to the interpretation of the concept of "imminent danger", an essential notion for the justification of the measure. From a legal point of view, imminence implies the existence of a high probability that the damage will occur in a short period of time, without the intervention of the authorities. In practice, however, this notion is often interpreted in a restrictive way, the courts being reluctant to validate the measure when there is an interval of apparent calm between the moment of aggression and the issuance of the order. Such an approach ignores the specificity of domestic violence, characterized by a cyclical dynamic, in which episodes of violence are followed by periods of apparent normality. From this perspective, the mere absence of an active conflict at the time of the intervention cannot be interpreted as the disappearance of the risk. The jurisprudence of the European Court of Human Rights emphasizes that the authorities have the obligation to assess the risk in a prospective manner, taking into account the entire context of the relationship between the parties. In the case of Talpis vs. Italy, the Court held that the lack of adequate preventive measures, in the context of a history of violence, can attract the state's liability for the violation of positive obligations [10, p.112]. Therefore, the police officer must demonstrate that the danger is not a one-time one, but derives from a behavioral pattern, characterized by coercive control and progressive escalation.

A second significant vulnerability is related to the standard of probation used at the time of the intervention. In many situations, the file submitted to the prosecutor is predominantly based on the victim's statement, without being supported by other objective elements. This approach becomes problematic in the context where the victim later changes his statements or refuses to support them. In the absence of additional evidence, the court may consider that the eviction measure is disproportionate, in relation to the protection of property rights and the inviolability of the home [1, Art.27; 2, Art.52]. However, this formal perspective does not reflect the complexity of the phenomenon of domestic violence, which includes forms of abuse that do not leave visible physical traces. Psychological violence, threats, or controlling behaviors can pose a real and significant risk, even in the absence of physical injury. In these conditions, it becomes essential to document additional factual elements, such as the emotional state of the victim, the disorder in the home or witness statements. The specialized literature emphasizes the importance of these elements, showing that risk assessment must be based on an integrated analysis of the context [8, p.18; 13, p.45].

In this framework, the use of technical means of recording, especially Body-Cam systems, becomes particularly relevant. Recordings made at the scene can directly capture the state of the victim and the behavior of the aggressor, providing the court with objective evidentiary support. They contribute to the transformation of a subjective perception into a material proof, able to support the legality of the ordered measure.

A third frequently encountered vulnerability concerns how to complete and moti-

vate the Risk Assessment Form. The analysis of these documents highlights, in practice, a tendency of excessive formalization, embodied in the mechanical ticking of some standardized boxes, without a detailed reasoning of the decision. Such an approach limits the court's ability to understand the reasoning behind the measure ordered. From a legal perspective, the reasoning is an essential element of the legality of the administrative act, as it allows the verification of its proportionality and soundness. In the case of the Temporary Protection Order, the reasoning must reflect the logical connection between the established factual situation and the need to adopt the measure. The regulations provide that the risk assessment must be carried out by corroborating several elements, including the direct observations of the police officer [6, Art.3], which implies an argument that goes beyond the mere formal recording of answers.

In this regard, an adequate justification should include explicit references to the history of the relationship between the parties, the existing power imbalance and any previous episodes of violence. It is also necessary to highlight how these elements lead to the conclusion of the existence of an imminent risk. The lack of such an argument may lead the court to consider the measure disproportionate or insufficiently substantiated.

Overall, the vulnerabilities identified do not necessarily reflect deficiencies in the regulatory framework, but rather difficulties in applying it in practice. The complexity of domestic violence situations requires an integrated approach, where risk assessment, evidentiary documentation and decision reasoning are interdependent. Consolidating the effectiveness of the Provisional Protection Order thus implies not only the improvement of the legislative framework, but also the development of the professional skills of the staff involved, in order to ensure a grounded and sustainable intervention from a legal point of view.

V. Comparative law perspectives and the evolution of electronic monitoring mechanisms. The analysis of the effectiveness of the TPO cannot be fully carried out in the absence of a reference to the regional legal context and the existing development trends at the European level. Romania and the Republic of Moldova are part of a relatively convergent normative framework, largely determined by the commitments assumed by ratifying the Istanbul Convention, which imposed common standards in the field of preventing and combating domestic violence. These standards aim not only to define the phenomenon, but also to establish effective mechanisms for intervention and protection of victims. However, the comparative analysis reveals significant differences regarding the degree of operationalization of these mechanisms, especially in relation to the integration of technology and the decision-making autonomy of the police officer [7, points 53-55; 22, p.8]. A defining element of the recent evolution is the introduction of electronic monitoring systems, intended to ensure compliance with the measures ordered by the protection order. In Romania, this process was consolidated by the adoption of Law No.146/2021 on electronic monitoring, which establishes the Electronic Monitoring Information System (S.I.M.E.) [21, Art.3]. From a functional perspective, this system responds to one of the most important limitations of the classic mechanism, namely the impossibility of continuous supervision of compliance with the prohibitions imposed on the aggressor. Monitoring through electronic devices, such as bracelets, allows real-time location and the generation of automatic alerts in case of violation of the safety perimeter established around the victim.

Criminological studies highlight the positive impact of these mechanisms on the prevention of recidivism, indicating a significant reduction in violent behaviors in situations where the aggressor is subject to active electronic surveillance [17]. Beyond the

dissuasive effect, these systems contribute to increasing the victim's sense of security and to the efficiency of police intervention, by reducing the reaction time in situations of violation of the ordered measures. In the Republic of Moldova, the normative framework allows, in turn, the use of such mechanisms, but their large-scale implementation is at an early stage, being dependent on institutional resources and strategic priorities assumed at the governmental level. Recent programmatic documents indicate that the expansion of electronic monitoring systems is a priority direction, in the context of the need to optimize human resources and increase the efficiency of the intervention [22, p.10].

A relevant difference in comparative terms concerns the duration of emergency measures and its implications for case management. In Romania, the Temporary Protection Order has a limited duration, usually up to 5 days, while in the Republic of Moldova "the emergency protection order issued by the police produces effects for a period of up to 10 days" [4, Art.12/1; 7, p.156]. This temporal difference generates distinct effects on the intervention: on the one hand, it provides a more extended interval for consolidating the evidence and for facilitating the victim's access to support services; on the other hand, it imposes an increased responsibility regarding the accuracy of the initial risk assessment. From the perspective of comparative law, one of the most persistent difficulties is represented by the conflict between the right to property and the need to protect the victim. Both in Romania and in the Republic of Moldova, the inviolability of the domicile is constitutionally protected [1, Art.27; 2, Art.52], which causes, in certain situations, a reluctance to apply the measure of evicting the aggressor, especially when he is the owner of the building. However, the jurisprudence of the European Court of Human Rights established the principle of the prevalence of the right to life and physical integrity over patrimonial rights, emphasizing the need to adopt effective protection measures in risk situations [10, p.112].

In this context, the substantiation of the police decision must be carried out with a high degree of rigor, by highlighting the elements that indicate a real and imminent risk. The specialized literature highlights the importance of using evaluation models that include relevant variables, such as access to weapons, behavioral history and the existence of coercive control patterns [23, p.89]. The concept of coercive control, enshrined in more and more European legal systems, reflects a paradigm shift, in the sense of extending legal protection to non-physical forms of violence that affect the victim's autonomy and safety. This evolution is also visible in the public policies promoted at the national level. In the Republic of Moldova, recent strategies in the field of violence prevention focus on identifying and combating forms of psychological abuse, considered major risk factors for the escalation of violence [22, p.11]. Similarly, in Romania, legislative and jurisprudential trends indicate an increasing recognition of these forms of violence, which determines an adaptation of intervention tools.

Another relevant aspect in the comparative analysis is the digitization and interoperability process of the databases used by public order structures. In Romania, the integration of information regarding contraventional and criminal antecedents in operational IT systems allows for a real-time risk assessment [6, Art.3]. This ability to quickly access relevant data contributes to substantiating the decision and increasing the effectiveness of the intervention.

In the Republic of Moldova, the digitization process is under development, being oriented towards the integration of intervention sheets and relevant registers, including those regarding the possession of weapons. From a practical perspective, access to this information is essential for risk assessment, as the perpetrator's antecedents may in-

dicate a high potential for dangerousness. Thus, issuing a Temporary Protection Order without consulting this data can lead to an incomplete assessment, with a direct impact on the effectiveness of the measure.

Overall, the comparative analysis highlights the fact that the effectiveness of the Temporary Protection Order mechanism depends not only on the regulatory framework, but also on the degree of technology integration and the institutional capacity to use the available information. The evolution of electronic monitoring systems and digital infrastructure represents, in this sense, an essential direction for strengthening the protection of victims and for increasing the legal sustainability of police intervention.

Conclusions. The analysis carried out on the mechanism of the Temporary Protection Order highlights the fact that it currently represents one of the most dynamic and complex intervention tools in the matter of the protection of fundamental rights, used by the police forces in Romania and the Republic of Moldova. Beyond its normative dimension, the TPO reflects a paradigm shift in police activity, marking the transition from a predominantly reactive approach, centered on fact-finding, to a proactive one, oriented towards risk assessment and prevention. This evolution is consistent with European standards, which impose on the state the obligation to ensure the effective protection of vulnerable people, including through quick and appropriate interventions [10, p.3159].

The analyzed chapters highlighted the fact that the effectiveness of the Temporary Protection Order does not depend exclusively on the existence of an adequate legislative framework, but essentially on the way in which it is applied in practice. Home invasion, risk assessment, use of technical means and evidentiary substantiation are interdependent stages of the same decision-making process, in which any deficiency can affect the legal sustainability of the measure. In particular, the analysis of judicial vulnerabilities demonstrated that the reversal of orders is not determined, in most cases, by the non-existence of danger, but by the insufficiency of documentation and the lack of coherent reasoning [12, p.73; 14, pp.102-104].

The integration of technology in police activity, especially through the use of Body-Cam systems and electronic monitoring mechanisms, is a determining factor for increasing the efficiency of the intervention. These tools help to objectify the evidence and reduce the reliance on the parties' statements, which are often unstable in the context of abusive relationships. At the same time, recent legislative developments, such as the introduction of electronic monitoring systems, indicate a clear tendency to strengthen protection mechanisms, by integrating technological solutions into the procedural flow [21, Art.3].

From a comparative perspective, although Romania and the Republic of Moldova have developed convergent normative frameworks, there are relevant differences regarding the degree of implementation of these mechanisms and the use of technological resources. The standardization of intervention procedures and the harmonization of risk assessment criteria represent, in this context, a practical necessity, not just a theoretical objective. Standardizing the "language of risk" and the criteria for assessing imminent danger would facilitate cross-border cooperation and contribute to increasing the coherence of interventions in the regional space [7, points 53-55; 22, p.8].

Operationally, the research results underline the importance of continuous professionalization of personnel involved in the management of domestic violence cases. Effective intervention is not limited to the mechanical application of procedures, but involves the ability to assess complex situations, identify risk indicators and rigorously document the relevant elements. In this sense, professional training must go beyond the theoretical

dimension and include practical exercises based on realistic scenarios, which simulate the conditions of uncertainty and pressure characteristic of real interventions [13, p.45; 19, p.114].

A central role in strengthening the effectiveness of the OPP mechanism is the quality of the documentation made at the time of the intervention. The Risk Assessment Form, filled in rigorously and reasoned, constitutes the legal foundation of the ordered measure and the main element analyzed by the court. Correlating it with digital evidence and other factual elements contributes to the creation of a coherent body of evidence capable of supporting the legality and proportionality of the intervention. At the same time, the analysis highlights the need for a change of perspective on the role of the police in this field. It can no longer be perceived exclusively as an executor of the law, but as an active actor in the protection of fundamental rights, responsible for assessing risks and preventing serious consequences. This dimension implies the assumption of increased responsibility, but also the development of specific skills, adapted to the complexity of the phenomenon of domestic violence.

In conclusion, the effectiveness of the Temporary Protection Order depends on the interaction between the regulatory framework, the institutional capacity and the level of professionalism of the operational staff. Strengthening this mechanism requires not only the improvement of legislation, but also the integration of technology, the standardization of procedures and the continuous development of professional skills. In this way, police intervention can adequately respond to contemporary demands regarding the protection of human rights and ensuring safety in private space.

Bibliographical references

1. The Constitution of Romania. Revised. In: Official Gazette No.767 of October 31, 2003.
2. The Constitution of the Republic of Moldova adopted on July 29, 1994. Republished. In: Official Gazette of the Republic of Moldova No.78/140, March 29, 2016.
3. Law No.217/2003 for the Prevention and Combating of Domestic Violence. Republished. In: Official Gazette No. 365 of May 30, 2012, with subsequent amendments and additions.
4. Law No.45/2007 regarding the Prevention and Combating of Family Violence. In: Official Gazette of the Republic of Moldova No.55-56/178 of March 18, 2008, with subsequent amendments.
5. The Criminal Procedure Code of Romania, adopted by Law No.135/2010. In: Official Gazette No.486 of July 15, 2010.
6. Minister of Internal Affairs Order No.146/2018 regarding the Management of Cases of Domestic Violence by the Police. In: Official Gazette No.950 of November 9, 2018.
7. Council of Europe. Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Strasbourg, 2011.
8. Good Practice Guidelines in the Investigation and Prevention of Domestic Violence, Ministry of Internal Affairs, Bucharest, 2018.
9. Minister of Internal Affairs of the Republic of Moldova. Instruction No.42/2018 regarding the Mode of Police Intervention in cases of Family Violence.
10. European Court of Human Rights. Osman vs. United Kingdom, Judgment of October 28, 1998; Talpis vs. Italy, Judgment of March 2, 2017.
11. Campbell J.C. Danger Assessment Tool: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide. In: Journal of Interpersonal Violence, Vol.20,

No.7, 2005, pp. 653-674.
12. Law No.218/2002 regarding the Organization and Operation of the Romanian Police. Republished. In: Official Gazette No.170 of March 2, 2020.
13. Buzatu N. Police tactics. MIA Publishing House, Bucharest, 2018.
14. Udroiu M. Criminal procedure. The General Part. C.H. Publishing House: Beck, Bucharest, 2020.
15. Emergency Ordinance No.104/2020 regarding Some Measures for the Use of Audio-Video Systems by the Police. In: Official Gazette of Romania.
16. Manuals of Police Tactics and Operative Intervention. "Alexandru Ioan Cuza" Police Academy, Bucharest, Romania.
17. Domestic Violence and Digital Probation Studies and Reports. National Institute of Criminology.
18. Strategic Documents regarding Security Cooperation between Romania and the Republic of Moldova, Ministry of Internal Affairs.
19. Operational Guidelines regarding the Use of Body-Cam Systems in Police Activity, Ministry of Internal Affairs, 2020.
20. European Reports on Preventing and Combating Domestic Violence. European Commission – Directorate General Migration and Home Affairs.
21. Law No.146/2021 regarding Electronic Monitoring. In: Official Gazette No.515 of May 18, 2021.
22. National Strategy to Prevent and Combat Violence against Women and Domestic Violence for the Period 2023–2027. Republic of Moldova.
23. Stark E. Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press, 2007.

CZU [347.453+342.737]:343.7 **DOI: https://doi.org/10.5281/zenodo.20807869**

VIOLATION OF THE TENANT'S DOMICILE BY THE LANDLORD: A CASE STUDY[1]

Andrei CAZACICOV,
PhD, University Lecturer,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Judge, Center Court of Appeal,
ORCID: 0000-0003-1117-1684

Abstract

The legal relationships between the owner of an apartment (the lessor) and the tenant thereof (the lessee) may give rise to controversies and, consequently, frequently lead to legal disputes. Particularly regrettable are situations in which, unlike the parties to the contentious legal relationship, legal professionals themselves misinterpret the essence of fundamental concepts – such as domicile, property, contractual validity, and criminal offence – thereby refusing to safeguard fundamental human rights and, more gravely, participating in their violation. The refugee crisis affecting the Republic of Moldova after 24 February 2022 brought to light a deeply troubling phenomenon: the unlawful violation of a tenant's domicile by the landlord is not treated as such by law enforcement authorities, which oppose the documentation of such acts and the restoration of the tenant's rights. The case study examined in this research illustrates one of the hundreds of situations encountered by refugees on the territory of the Republic of Moldova, the analysis of which is capable of generating relevant conclusions and practical solutions for those who are interested.

Keywords: domicile, residence, home, unlawful entry, lease, rent, property, inviolability of the domicile.

VIOLAREA DOMICILIULUI CHIRIAȘULUI DE CĂTRE PROPRIETAR: STUDIU DE CAZ

Abstract

Raporturile juridice dintre proprietarul unui apartament (locator) și chiriașul acestuia (locatar) pot stârni controverse și ca rezultat, adesea, litigii de drept. Regretabilă este situația când, spre deosebire de subiecții raportului juridic litigios, profesioniștii în domeniul dreptului interpretează eronat esența conceptelor fundamentale – domiciliu, proprietate, valabilitate contractuală, infracțiune –, exprimă un refuz în apărarea drepturilor fundamentale ale omului și, mai grav, participă la violarea acestora. Criza refugiaților ucraineni care a lovit din plin Republica Moldova după 24.02.2022, a scos în evidență un flagel odios – violarea domiciliului chiriașului de către proprietar nu este acceptat astfel de către organele de drept, care se opun documentării și restabilirii în drepturi a chiriașului. În studiul de caz reflectat în cercetare a fost exemplificat unul din sutele de cazuri cu care se ciocnesc cetățenii statului nostru, dar și refugiații pe teritoriul Republicii Moldova, analiza căruia este în măsură să conducă la unele concluzii și soluții relevante pentru cei interesați.

Cuvinte-cheie: domiciliu, reședință, locuință, pătrundere, locațiune, chirie, proprietate, inviolabilitatea domiciliului.

[1] The present article has been developed within the framework of the research project: 25.80012.0807.22TC, National Security and Societal Resilience in the Face of Humanitarian Crises and Geopolitical Risks.

Introduction. In judicial practice, atypical instances of unlawful interference with the inviolability of the home are frequently encountered, whose legal qualification as such is usually denied by state authorities, on the ground that an alleged lack of correspondence exists between the legal status of the property owner and that of its occupant.

Tenants generally have a legitimate status, based on a written or verbal lease/rental agreement or by virtue of a right of habitation, and the issue of illegal occupation phenomena, such as squatting, trespassing, adverse possession, etc., that are widespread in countries around the world does not arise, although even in these latter cases the right to the inviolability of the home cannot be disregarded.

Tenants (including pupils and university students, socially vulnerable families, migrants, refugees, travelers, and others) are thereby placed in a markedly disadvantaged position vis-à-vis the holder of the right of ownership, with effective protection from law enforcement authorities being afforded predominantly, if not exclusively, to the latter – irrespective of whether the lease agreement was concluded in written form or orally.

In a genuine rule-of-law state, the quintessence of the protection of constitutional and fundamental human rights presupposes the prompt and effective investigation of alleged violations, prevention and repression constituting two facets of the same legal imperative.

In a recent and particularly disturbing case from national jurisprudence, the owner of an apartment located in the Chisinau City, which had been leased since 2020, unilaterally decided to evict the tenants – a family composed of a single mother and her three minor children. In furtherance of this plan, on 4 December 2025, the landlord, acting in participation with two other individuals, waited until the tenants were absent from the residence, forcibly damaged the door lock, and unlawfully entered the domicile. Upon the tenants' return, the landlord categorically refused them access to the apartment and to the entirety of the family's property, including furniture, household appliances, clothing, personal documents, financial resources, food supplies, and companion animals. As a result, the family was expelled into the street during wintertime, deprived of any means of subsistence and dispossessed of all their belongings. Subsequently, the landlord and his accomplices used the tenants' property, part of which was destroyed, part damaged, and part unlawfully appropriated.

At the landlord's informal request, officers of the territorial police sector, acting without prosecutorial authorization, without a warrant issued by the investigating judge, and without the permission or consent of the tenants, conducted – within only a few hours of the incident – an on-site inspection of the apartment, including photographing and inventorying the tenants' belongings. In so doing, the officers of the Ministry of Internal Affairs (MIA) effectively facilitated the unlawful eviction of the tenants, categorically refusing to restore them in their rights and affording protection to the landlord, within the detriment of the tenants' rights to possession and use of the residence, of the inviolability of the domicile. as well as their right of ownership over their personal property.

Conversely, in response to the tenants' official requests (including emergency calls to the "112" service and written complaints submitted to the competent law enforcement authorities), the Rapid Response Patrol Unit refused to help; the duty unit of the police inspectorate obstructed the formal lodging of a complaint; and the investigative-operational group declined to attend the scene for the purpose of documenting the incident. Written petitions addressed to various state authorities – including the Prosecutor General's Office, the Prosecutor's Office of the municipality of Chisinau, the National Anticorruption Centre, the Internal Protection and Anticorruption Service, the General Police

Inspectorate, and the Ombudsman for Children's Rights – proved unsuccessful, as none of the aforementioned entities reacted promptly or acknowledged the violation of the tenants' right to the inviolability of their home, nor did they provide assistance to the victims in a state of acute deprivation. Ultimately, on 16 January 2026, the police inspectorate initiated criminal proceedings exclusively under Article 186(2)(b) of the Criminal Code[1] (theft committed by two or more persons), disregarding the aggravating circumstance of commission "by unlawful entry into a residence". The internal disciplinary investigation into the actions of MIA officers is being intentionally delayed by more than 3 months, contrary to paragraph 59 of the Disciplinary Statute of the civil servant with special status within the Ministry of Internal Affairs [29], which establishes a maximum time limit of up to 30 days.

In the case at hand, the law enforcement authorities justified their refusal to initiate criminal proceedings for the offense of unlawful entry into a residence on the following grounds: the alleged primacy of the right of ownership over the right to the inviolability of the home; the purported inapplicability of the concept of "domicile" to home rented by a tenant; the absence of a written lease agreement.

In light of this specific case, against the background of a sharp increase in the number of apartments offered for rent – including in the context of the refugee crisis triggered by the outbreak of the Russo-Ukrainian war, which struck the Republic of Moldova unexpectedly – the question arises whether a tenant benefits from the protection of the inviolability of his or her domicile. A second issue concerns whether the acts of the landlord, as well as those of the police officers, consisting in entering and inspecting the tenant's residence, fall within the scope of criminal law. Finally, it must be clarified whether non-compliance with the statutory form required for a lease agreement legitimizes the actions of the landlord and/or the police officers.

Methods and materials applied. Within the framework of the present study, the following research methods were employed: the case study method, as well as the methods of analysis, synthesis, logical reasoning, and comparative examination. The materials relied upon consist of the relevant normative acts, specialized scholarly publications in the field, judicial decisions rendered by national courts – including interpretative and explanatory rulings – as well as the case-law of the European Court of Human Rights (ECtHR).

Discussions and results obtained. In order to provide a clear and conclusive answer to the questions raised in the Introduction, we have undertaken a comprehensive, objective, and multifaceted examination of the key aspects of the case, deliberately avoiding a standard criminal-law analysis and confining ourselves to the presentation of the essential circumstances only.

Case-law overview. Judicial practice reveals instances of prompt intervention and proper documentation in comparable situations. Thus, on 04 December 2018, a sector police inspector, wearing his official uniform, unlawfully entered the residence of another person, where he remained for approximately 30 minutes. Upon being discovered, he refused to leave the domicile until the arrival of the investigative group. As a result of special investigative measures, it was established that the inspector had ordered the conduct of a residential search in the absence of authorization from the investigating judge, for the purpose of locating and identifying a stolen vehicle. In that case, the sector inspector

[1] **Note**: Considering the confidential nature of criminal investigations (Art. 212 of the Criminal Procedure Code), the information presented from the pending criminal case has been described in a generic manner. Moreover, pursuant to the principle of the presumption of innocence (Art. 8 of the Criminal Procedure Code), every person is presumed innocent as long as their guilt [...] has not been established by a final and irrevocable court decision.

was documented for the commission of the offense provided for in Article 179(3)(a) of the Criminal Code [2, p. 120].

In another similarly classified case, on 02 October 2013, a sector police inspector, with the aim of detecting an alleged theft of apples and by abusing his official position, unlawfully entered a person's residence, where, by applying physical force, he pushed the owner and refused to leave the domicile, subsequently carrying out an illegal search of a vehicle, garage, and household annexes [14].

A determination supporting the concurrence of offenses between unlawful entry into a dwelling and theft is illustrated in the following case: On 09 June 2006, G.V., acting pursuant to a prior agreement and together with the minor P.A., entered the household premises of M.V. Grossly violating public order and manifesting an evident lack of respect for society, G.V. and P.A. disturbed public peace and inflicted blows upon M.V., thereby causing him physical pain. Furthermore, P.A. shattered a window of the victim's house and broke an electric light bulb, engaging in conduct distinguished by particular audacity in its content. On the same occasion, while present inside M.V.'s dwelling, G.V. appropriated goods belonging to the victim in the amount of 280 lei [15].

The unlawful violation of the lessee's domicile was not upheld by the Supreme Court of Justice in a case concerning entry onto the premises of a tractor brigade. The Court reasoned that a tractor brigade is not ordinarily intended for residential use by natural persons, and no evidence to the contrary was adduced in the case file [23, § 33].

Conversely, the courts have upheld the offense of unlawful entry into the domicile of a family member vested with a right of habitation, even in the absence of a request by the owner to vacate the premises and in the absence of a prior complaint lodged by the owner. The court held that "for the legal classification of the act, the status of the victim and whether or not the victim has registered residence at the relevant domicile are immaterial. Criminal law concerns the unlawfulness of the perpetrator's conduct, not the legitimacy of the victim's position; accordingly, it is irrelevant who notified the law enforcement authorities [...]. The victim's administrative liability under Article 78 of the Contraventional Code (bodily injury), imposed upon the complaint of the convicted person, does not preclude the application of Article 179(2) of the Criminal Code to the convicted person" [24, §§ 8, 26].

The absence of a lease agreement concluded between the victim and the owner did not constitute an impediment to conviction under Article 179(2) of the Criminal Code in the following case: "On 08 May 2021, C.B., acting on fabricated grounds, repeatedly kicked the gate of the household until it opened. Thereafter, without the consent of the occupant O.M., who resided in the household of his former wife with her consent, C.B. entered the yard of O.M.'s domicile. Upon being requested to leave the premises, he failed to comply, remained in the yard, and committed acts of physical violence against O.M., consisting of a punch delivered to the nasal region" [25, §§ 6, 7, 29].

Likewise, in national jurisprudence, in a civil case concerning the eviction of occupants from an property owned by the claimant [13], it was emphasized that it is crucial for the court to fully investigate and clarify all aspects relating to the ownership and possession of the real estate – even in the absence of a written lease agreement – taking into account the rights and protection of the children involved, having regard to the best interests of the minors, and ensuring that they are not evicted from their sole domicile without a solid legal basis.

In another civil case, the Supreme Court of Justice underlined that, beyond any reasonable doubt, the defendants had resided since 2006 in the apartment located in the

municipality of Chisinau, possessed no other principal and permanent living space, and had thus established an indispensable connection with the residence in question, demonstrating an attachment akin to that of an owner and perceiving it as their home. Accordingly, it was held that the disputed apartment genuinely constituted the defendants' permanent dwelling and that they had developed durable ties with the immovable property; therefore, the apartment represented their "home" within the meaning of Article 8 of the European Convention on Human Rights [12].

The Concept. By "residence" is meant a room or a group of rooms intended for the permanent or temporary habitation of individuals, in which part or the entirety of their property is kept [21, § 29, p. 5].

The Constitutional Court has held that the notion of "domicile" possesses an autonomous meaning under criminal law and does not depend on definitions provided in other branches of law. The autonomous criminal-law definition of "domicile" does not disclose any elements of unconstitutionality [16, § 24].

The concept of domicile does not refer to the immovable property as a material object, but rather to the place in which a person conducts his or her private life [26, p. 145]. The notion of domicile is not contingent upon ownership rights over a house (living space) [19, p. 8].

Criminal law does not associate the notion of domicile with the idea of continuity (permanence). Accordingly, a room occupied for a short period or on a transient basis by a person (such as a room rented at a holiday resort during vacation, a hotel room, even where the stay is limited to one day or one night, etc.) is likewise regarded as a domicile [20, p. 292].

The European Court reiterates that the concept of "home" is of central importance to an individual's identity, self-determination, physical and mental integrity, the maintenance of relationships with others, and the existence of a stable and secure place within the community (case *Vinniychuk v. Ukraine*, ECtHR judgment of 20 October 2016, § 47). The concept of "home" within the meaning of Article 8 is not limited to spaces that are lawfully occupied or lawfully established. "Home" is an autonomous concept which does not depend on classification under domestic law. Whether a particular space constitutes a "home" attracting the protection of Article 8 § 1 depends on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (case *Jansons v. Latvia*, ECtHR judgment of 8 September 2022, § 52).

The European Court has on several occasions held that the qualification of an immovable property as a "domicile" is a question of fact and does not depend on the occupant's compliance with domestic legal requirements (case *Buckley v. the United Kingdom*, ECtHR judgment of September 25, 1996, § 54).

In a particular case, previously rented social housing remained the applicant's "domicile" within the meaning of Article 8 § 1 of the Convention even after he had signed a notice to quit and no longer had, under domestic law, the right to reside there (case *McCann v. the United Kingdom*, ECtHR judgment of 13 August 2008, § 46). The loss of a residence constitutes one of the most extreme forms of interference with the right to respect for one's domicile. Any person at risk of such interference must, in principle, be able to obtain a review of the proportionality of the measure by an independent tribunal, in the light of the relevant principles deriving from Article 8 of the Convention (Ibidem, § 50).

Legislation. In accordance with Article 12 of the Universal Declaration of Human Rights, no one shall be subjected to arbitrary interference with his or her private life, family, domicile, or correspondence, nor to attacks upon his or her honor and reputation.

Everyone has the right to the protection of the law against such interference or attacks [18].

Article 8 of the European Convention on Human Rights provides: "Everyone has the right to respect for his private and family life, his residence, and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law [...]" [10].

Pursuant to Article 29, paragraphs (1) and (3) of the Constitution, the domicile and residence are inviolable. No one may enter or remain in the domicile or residence of a person without his or her consent. Searches and on-site inspections may only be ordered and conducted in accordance with the law [9].

Under Article 6(11) of the Code of Criminal Procedure, the domicile is defined as a residence or building intended for the permanent or temporary habitation of one or more persons [...]. According to Article 12 of the same code, the inviolability of the domicile is guaranteed by law. Searches, inspections of the domicile, and other criminal procedural actions at the domicile may only be ordered and carried out pursuant to a judicial warrant, except in cases and in the manner provided for in this Code. In the event that procedural actions are carried out without a judicial warrant, the competent authority must submit the relevant materials to the court for review of legality immediately, but no later than 24 hours after completion of the action [7].

According to Article 38, paragraphs (1), (2), and (5) of the Civil Code, the domicile of a person is the place where he or she has habitual residence. A person is considered to retain his or her domicile as long as another has not been established. Habitual residence demonstrates a close and stable connection of the individual with the place in question. In determining habitual residence, all relevant factual elements are considered, particularly the duration and regularity of the person's presence at the location, as well as the conditions and reasons for such presence. A person whose domicile cannot be determined with certainty is deemed to reside at the place of temporary residence [6].

Furthermore, Article 179, paragraph (1) of the Criminal Code provide the act of entering or remaining unlawfully in the domicile or residence of a person without consent, or refusing to leave upon request, as well as illegal searches and inspections [...] [8]. Letter (a), paragraph (3) of the same article establishes liability for committing these same acts through the use of one's official position [8].

Special Legal Object. The special legal object of the crime of violation of domicile is the social relations regarding the realization, in accordance with Article 29 of the Constitution, of the right to the inviolability of the domicile.

The inviolability of the domicile constitutes the freedom to enjoy a personal space delineated by the boundaries of a residence. It is, therefore, nothing other than the liberty to benefit from an immovable space, characterized by territoriality, which simultaneously functions as a primary space. Such a space ensures intimacy. It can be personalized, and any intrusion is perceived by the holder of that space as a violation [30, p. 54].

Accordingly, the protection of the inviolability of the domicile is not conditioned upon the existence of a right of ownership (or any other real right) over the residence designated as a domicile. The same individual does not necessarily combine the capacities of holder of the right to the inviolability of the domicile and of holder of ownership rights over the immovable property corresponding to that domicile [3, p. 503]. In this regard, the person who acquires the right of use over the immovable property benefits from a preferential right to protection against the commission of the respective offense. This is logical, as unlawful entry into a domicile is not a crime against property [28, p. 38].

Violation of the legal prohibition against infringing the right to the inviolability of the domicile requires the restoration of that right through recourse to competent state institutions, including, where appropriate, the intervention of criminal law [30, p. 49].

An individual's freedom to enclose oneself within one's residence is not a privilege of ownership, but an aspect of personal liberty – a corollary of personality and the freedom to live somewhere. Consequently, a tenant may assert his or her right over the residence even against the property owner [1, p. 192].

According to the interpretation provided by the European Court of Human Rights, the right to respect for the private and family life of any person is not subject to any restriction, not even by the owner of the respective residence. In the Court's view, the interpretation given by the Government of Romania to the relevant legal provisions was erroneous and made in bad faith, as it would effectively permit the property owner, at any time, to violate the domicile of a potential tenant, thereby preventing the tenant from enjoying private and family life (case *Surugiu v. Romania*, ECtHR judgment of 10 November 2004, § 54). The Court further observed the striking fact that the police, alerted by the applicant following the incident, went to the site and, without intervening, merely limited themselves to drafting a report (Ibidem, § 62).

In that case, the deplorable inaction of the authorities in ceasing the interference by third parties with the right to respect for the domicile, and the resulting inability of the applicant to enjoy his domicile, led to a finding of a violation of Article 8 of the Convention.

The Court recalls that, while Article 8 primarily aims to protect the individual against arbitrary interference by public authorities, it also entails the adoption by these authorities of measures designed to ensure respect for the rights guaranteed under this article, extending even to relationships between private individuals (case *Stubbings and Others v. the United Kingdom*, ECtHR judgment of 22 October 1996, § 62; case *Ignaccolo-Zenide v. Romania*, No.31,679/1996, ECtHR judgment of 25 January 2000, § 94; case X *and* Y *v. the Netherlands*, ECtHR judgment of 26 March 1985, § 23).

The Immaterial Object of the offense of unlawful entry into a domicile, requires the following qualifications:

1. The mere existence of an immovable property is insufficient to establish a domicile associated with that property. It is also necessary that the space within that property be effectively used, such that intimate, family, or private life can be carried out there, even in a nascent form. Once a person establishes sufficient and continuous ties with the space associated with an immovable property, that space acquires the status of a domiciliary space;

2. The purpose of the domicile is to enable intimate, family, and private life;

3. The domicile constitutes a space that commands respect from third parties, who bear the negative obligation not to undertake any actions that could cause harm;

4. The legal protection of the domicile is not conditioned upon the permanent presence of the holder in the respective space [31, p. 49].

Criminal law protects the *de facto* occupant of the domiciliary space, regardless of how precarious their title may be, against any unlawful acts by another person. In a state governed by the rule of law, legality entails the use of lawful means to assert one's rights, opposing any attempt by individuals to take justice into their own hands [32, p. 59].

In this regard, the Constitutional Court of Romania has noted that [...] the provision criminalizes, irrespective of the holder and the form of legal ownership or possession, unlawful entry in any manner into a residence, room, annex, or enclosed space pertaining thereto, without the consent of the person using it, or refusal to leave upon request,

without violating the principle of equal protection of private property [17].

The right to the inviolability of the domicile may even be held by persons who have no legal rights over the residence itself [34, p. 9].

The Victim of the offense may be any person, regardless of status: owner, tenant, family member with a right of habitation, etc. It is irrelevant whether the victim holds a residence permit. Criminal law is concerned not with the legitimacy of the victim's position, but with the illegality of the perpetrator's conduct. If the holder of the right to the inviolability of the domicile has committed certain administrative offenses or infringements of property rights, these are separate matters to be resolved through the means provided by law and do not affect the existence of the offense of unlawful entry into a domicile [3, p. 504].

The victim of unlawful entry into a domicile may even be a person residing in the space without any legal basis [33, p. 12]. It is not necessary for the passive subject to be the owner of the residence or for the residence to be based on a formal title [5, p. 197].

What is essential is that the victim (the passive subject) is the holder of the constitutional right to the inviolability of the domicile [57, p. 59].

Objective Element. The actus reus of the offense of unlawful entry into a domicile requires, as a matter of imperative law, that the entry, remaining, refusal to leave, inspection, or search of the domicile be carried out without the consent of the victim and, correspondingly, in violation of the law.

From the meaning of Article 179 of the Criminal Code, it follows that the entry must occur without right – that is, abusively, without any legal justification, and without the consent of the person using the residence [11, p. 12].

"Entry" constitutes illegal access, whether covert or open, into a room, another storage space, or a residence (for the purpose of appropriation). It may be committed either by overcoming obstacles and resistance or without doing so [21, § 29, p. 5]. If, in the course of appropriation through entry into a room, another storage space, or a residence, the perpetrator intentionally destroys or damages the property of another person not forming the material object of the appropriation (for example, furniture, household appliances, etc.), such acts, when supported by sufficient grounds, must be additionally qualified under Article 197 of the Criminal Code [21, § 29, p. 5].

The Lease Arrangement. Under a lease agreement, the owner of an immovable property temporarily cedes to the tenant the right of use and possession (Article 1251 of the Civil Code). Even if the owner retains title, their rights over the residence are limited to the extent of the rights granted to the tenant under the lease agreement.

From another perspective, although Article 1252 of the Civil Code provides that a lease contract must be in writing [6], noncompliance with the written form deprives the parties of the right, in the event of a dispute, to rely on witness testimony to prove the legal act. Noncompliance with the written form renders the legal act void only if this effect is expressly provided by law or by agreement of the parties (Article 322 of the Civil Code).

When the lessor and lessee have not concluded the lease contract in writing – often as a strategy by the owner to evade income taxes[2] – the validity of the contract is not affected, provided the co-contracting parties do not deny its existence and execution, or it can be demonstrated by other evidence of the civil relationship (*e.g.* receipts for utility payments, records of major repairs, public service certificates regarding the property, etc.).

[2] **Note**: The violation of legal provisions regarding the deadlines for concluding lease agreements between the tenant and the property owner is sanctioned under Art. 180, para. (3) of the Contravention Code, while non-compliance with the procedures for preparing and submitting tax reports is sanctioned under Art. 260, para. (1) of the Tax Code.

The lessor's right to inspect the leased property (Article 1268 of the Civil Code) may not infringe upon the inviolability of the domicile and the personal life of the tenant. Termination of the lease (Article 1281 of the Civil Code) does not confer upon the lessor/owner the right to violate the tenant's domicile.

Conversely, if the tenant refuses to vacate the residence, the lessor must request a forced eviction through a court decision, in accordance with the Civil Procedure Code. Arbitrary exercise of a legitimate or purported right by circumventing the established legal procedure may give rise to criminal liability (Article 352 of the Criminal Code) or administrative liability (Article 335 of the Contravention Code).

Any person at risk of losing their residence should be able to obtain from an independent tribunal a review of the proportionality of the measure (case *Vrzić v. Croatia*, ECtHR judgment of 12 July 2016, § 62).

Under Article 8(2) of the European Convention on Human Rights, interference by an authority in the exercise of the right to respect for private life – including the inviolability of the domicile – is permissible only if it: is prescribed by law; is necessary in a democratic society; pursues a legitimate aim; is proportionate [27].

The European Court of Human Rights has found that the national court failed to evaluate competing interests, disregarding the fact that the applicants had no alternative residence and would be left homeless after more than a decade of lawful occupation, during which they not only paid rent and utility bills but also carried out substantial repairs neglected by the building administration for years (case *Naforniţa v. Moldova*, ECtHR judgment of 16 April 2024, § 41).

The Active Subject of the offense of unlawful entry into a domicile may be any person, including the owner of the property constituting the violated space or the holder of another right related to that property, if they have transferred the right of use to another person. For example, the owner of a residential space, after having leased it to another person, unlawfully enters the leased premises without the right and without the consent of the entitled persons [22, p. 1041-1042], respectively, guilt is characterized by the form of direct intention.

The Subjective Element. For the existence of the offense of unlawful entry into a domicile, the perpetrator must be aware that they are entering a space reserved for the intimate life of another person [4, p. 221].

When addressing the presence of the aggravating circumstance "through entry into a residence", it is necessary to determine the purpose for which the person entered the residence and when the intention to commit appropriation arose. If the perpetrator initially entered a room, another storage space, or a residence without the intention to commit appropriation, and subsequently appropriated the property of another person, the examined aggravating circumstance will be absent. In the case of appropriation committed through entry into a residence, no additional qualification under Article 179 of the Criminal Code is required, as the appropriation, in this aggravated form, subsumes the unlawful entry into the domicile [21, § 29, p. 5].

Conclusions and recommendations. Based on the applicable national and international legislation, the jurisprudence of national and supranational courts, and doctrinal opinions, the following conclusions can be drawn, which are relevant both to the case study analyzed and to a wide range of similar cases currently linked to latent criminality:

1. When leasing an immovable property, the owner cedes their prerogatives of possession and use to the tenant;
2. The tenant acquires protection of the right to the inviolability of their residence

regardless of whether the lease agreement is written or verbal, and such protection persists irrespective of the expiration of the lease term or the issuance of a notice to vacate;

3. The lessor may regain full ownership rights (including possession and use) only by approaching the courts for contract termination and forced eviction of the tenant;

4. In assessing the necessity of forced eviction, courts are obliged to apply the "triple test" regarding interference with human rights;

5. Entry, remaining, refusal to leave, searches, or inspections of a residence without the tenant's consent and/ or judicial authorization inevitably triggers criminal liability under Article 179 of the Criminal Code;

6. In the absence of a pre-existing intent to appropriate property, unlawful entry into a residence (Art. 179 Criminal Code) runs concurrently with acts of appropriation (Art. 186, 187, 188, 217/4 Criminal Code);

7. When there is a pre-existing intent to appropriate property, unlawful entry is subsumed under the aggravating circumstance "through entry into a room, another storage space, or residence", and separate qualification under Article 179 Criminal Code is excluded;

8. Passivity of national authorities in documenting unlawful entry committed by the owner and police officers against the tenant may, in the future, expose the state to liability before the European Court of Human Rights (ECtHR).

In the specific case study, it is strongly recommended that law enforcement authorities examine the facts under the elements of the offense provided in Article 179(1) of the Criminal Code.

Additionally, a rigorous examination is warranted from the perspective of related offenses or administrative contraventions:

- Arbitrariness (Art. 352 Criminal Code or Art. 335 Contravention Code) – for prolonged deprivation of the victims' entire property;
- Destruction or damage to property (Art. 197 Criminal Code or Art. 104 Contravention Code) – for destruction of the lock and damage to dishes, clothing, and personal belongings;
- Violation of the inviolability of personal life (Art. 177 Criminal Code) – for unauthorized access to victims' notes, notebooks, computers, laptops, tablets, mobile phones, and the dissemination of their information publicly;
- Regarding police officers – under the aggravating circumstance "using official position" (Art. 179(3)(a) Criminal Code), since the internal investigation does not exclude criminal liability.

The victims explicitly requested such measures in multiple complaints addressed to the competent authorities, and the neglect of factual and legal circumstances raised in these complaints is both inexplicable and inadmissible.

In general, we recommend strengthening the theoretical and practical training of Ministry of Internal Affairs personnel, as well as prosecutors and judges, to prevent analogous cases, the number of which is showing an alarmingly increasing trend.

Therefore, a country's economic and tourist attractiveness is directly proportional to the high level of protection provided by law enforcement authorities, but also by the speed of the state's reaction to illegalities.

Bibliographical references

1. Barbu C. Protection of the Person in Romanian Criminal Law. Craiova: "Scrisul Românesc" Publishing, 1977. 265 p.

2. Botnaru S., Popa G. Commission of the Crime of Residence Violation Using the Position of Service. In: Scientific Annals of „Alexandru Ioan Cuza" University of Iasi, Volume LXVII/1, Legal Sciences, 2021. 240 p.
3. Brînza S., Stati V. Criminal Law. Special Part. Vol. I. Chișinău: P.-P.C. "Tipografia Centrală", 2011. 1062 p.
4. Cazacu R. Aspects Regarding the Existence of a Real Concurrence of Crimes Between Qualified Theft Committed Under Art. 209 Para. (1) Let. (i) of the Criminal Code and Residence Violation. Bucharest: Journal „Dreptul", 2011, No.1. 286 p.
5. Cioclei V. Criminal Law. Special Part: Crimes against the Person. Bucharest: "Lumina Lex Publishing", 2004. 352 p.
6. Civil Code of the Republic of Moldova No.1107 of 06.06.2002. In: Official Gazette of the Republic of Moldova, 01.03.2019, No.66-75.
7. Criminal Procedure Code of the Republic of Moldova No.122-XV of 14.03.2003. In: Official Gazette of the Republic of Moldova, 05.11.2013, No.248-251.
8. Criminal Code of the Republic of Moldova No.985-XV of 18.04.2002. In: Official Gazette of the Republic of Moldova, 13.09.2002, No.128-129.
9. Constitution of the Republic of Moldova No.1 of 29.07.1994. In: Official Gazette of the Republic of Moldova, 13.11.2024, No.466.
10. Convention for the Protection of Human Rights and Fundamental Freedoms, No.1950 of 04.11.1950. In: International Treaties, 30.12.1998, No.1.
11. Decision of the Criminal College of the Supreme Court of Justice of the Republic of Moldova No.1ra-282/2013 of 06.03.2013. In: Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2013, No.10.
12. Decision of the Civil, Commercial and Administrative-Contentious College of the Supreme Court of Justice No.2ra-1512/2018 of 22.08.2018. In: Archive of Chisinau Court, Buiucani Branch.
13. Decision of the Civil, Commercial and Administrative-Contentious College of the Supreme Court of Justice No.2ra-412/23 of 05.06.2024. In: Archive of Chisinau Court, Central Branch.
14. Decision of the Criminal College of the Supreme Court of Justice No.4-1re-299/2014 of 25.09.2014. In: Archive of Soroca Court.
15. Decision of the Criminal College of the Supreme Court of Justice No.1ra-174/09 of 04.02.2009. In: Archive of Hâncești Court, Ialoveni Branch.
16. Decision of the Constitutional Court of the Republic of Moldova No.16 of 11.02.2019 on the inadmissibility of the referral regarding the exception of unconstitutionality of certain provisions of Art. 179 Para. (1) of the Criminal Code and Art. 6 pt. 11) of the Criminal Procedure Code (residence violation), § 24. Available: https://www.constcourt.md/ccdocview.php?l=ro&tip=decizii&docid=604 (accessed 21.02.2025).
17. Decision of the Constitutional Court of Romania No.238 of 05.06.2003 regarding the exception of unconstitutionality of Art. 192 Para. (2) and (3) of the Criminal Code. In: Official Gazette of Romania, 04.07.2003, No. 478.
18. Universal Declaration of Human Rights No.12 of 10.12.1948. In: International Treaties, 30.12.1998, No.1.
19. Dogaru I., Cercel S. Considerations Regarding Residence in Romanian Civil Law. Bucharest: Journal of Legal Sciences, No. 2/2008, pp. 7-21. 226 p.
20. Dongoroz, et all. Theoretical Explanations of the Romanian Criminal Code. General Part, Vol. I, 2nd Edition. Bucharest: Romanian Academy Publishing „All Beck", 2003. 399 p.

21. Plenary Resolution of the Supreme Court of Justice No.23 of 28.06.2004 on judicial practice in criminal proceedings regarding the theft of goods, § 29. In: Bulletin of the Supreme Court of Justice of the Republic of Moldova, 2004, No.8.
22. Hotca M.A. Criminal Code. Commentaries and Explanations. Bucharest: C.H. Beck Publishing, 2007. 1608 p.
23. Încheierea Curții Supreme de Justiție nr. 1ra-71/2024 din 20.02.2026. https://jurisprudenta.csj.md/search_col_penal.php?id=26807 (accesat la 23.02.2026)
24. Încheierea Curții Supreme de Justiție nr. 1ra-404/2025 din 27.11.2025. https://jurisprudenta.csj.md/search_col_penal.php?id=26583 (accesat la 19.02.2026)
25. Încheierea Curții Supreme de Justiție nr. 1ra-238/2023 din 15.01.2026. https://jurisprudenta.csj.md/search_col_penal.php?id=26687 (accesat la 23.02.2026)
26. Loghin O., Toader T. Romanian Criminal Law. Special Part. Bucharest: Publishing „Șansa", 1999. 477 p.
27. Recommendation of the Supreme Court of Justice No.84 of 20.01.2016 regarding the application of legal provisions on authorizing forced entry into the residence/rooms of the debtor in securing enforcement, and the method of transferring seized goods for custody. Available: https://jurisprudenta.csj.md/search_rec_csj.php?id=132 (accessed 22.02.2026)
28. Stati V. Some Considerations on the Practice of Applying Criminal Liability for the Crime of Residence Violation (Art. 179 CC RM). Chisinau: National Justice Institute Journal, No.3 (10), 2009. 74 p.
29. Disciplinary Statute of the Public Official with Special Status within the Ministry of Internal Affairs, approved by Government Decision No.409 of 07.06.2017. In: Official Gazette of the Republic of Moldova, 16.06.2017, No.190-200.
30. Ștefănuț R. The Legal Object of the Crime of Residence Violation. In: National Law Journal, No.9, 2011. 64 p.
31. Ștefănuț R. The Material (Immaterial) Object of the Crime of Residence Violation. In: National Law Journal, No.12, 2011. 72 p.
32. Ștefănuț R. The Victim of the Crime of Residence Violation. In: National Law Journal, 2012, No.1. 68 p.
33. Shevchenko I.A. Criminal-Legal Protection of the Inviolability of Private Life. Krasnoyarsk: Dissertation for the Candidate of Legal Sciences, 2005. 196 p.
34. Shelestyukov V.N. Criminal-Legal Means of Ensuring the Inviolability of the Residence. Krasnoyarsk: Dissertation for the Candidate of Legal Sciences, 2006. 183 p.

CZU 341.231.14:351.753 **DOI: https://doi.org/10.5281/zenodo.20808067**

PROHIBITION OF THE CARRYING PROTECTIVE WEAPONS AT PEACEFUL ASSEMBLYS

Gheorghe RENIȚĂ,
PhD, Associate Professor,
Moldova State University,
ORCID ID: 0000-0003-2722-009X

Abstract

This paper analyses the issue of prohibiting the carrying of protective weapons during peaceful assemblies. It is shown that freedom of assembly is guaranteed by a series of national and international normative acts. The analysis is focused on the norms of the European Convention on Human Rights and the Constitution of the Republic of Moldova. It is found that prohibiting the carrying of protective weapons during peaceful assemblies and, correlatively, the application of liability for defying this prohibition generates an interference with the right to peaceful assemblies.

It is concluded that if the carrying of a protective weapon during a peaceful assembly is not likely to generate a threat to public safety or order, then the right to peaceful assembly should not be restricted by the application of sanctions. This conclusion is substantiated by the case law of the European Court of Human Rights.

Keywords: protective weapon, freedom of assembly, fundamental right, public order, public safety.

INTERZICEREA PORTULUI DE ARME DE PROTECȚIE LA ÎNTRUNIRILE PAȘNICE

Abstract

Prezenta lucrare analizează problema interzicerii purtării armelor de protecție în timpul întrunirilor pașnice. Articolul evidențiază că libertatea întrunirilor este garantată printr-o serie de acte normative naționale și internaționale. Analiza se concentrează asupra normelor European Convention on Human Rights și ale Constituției Republicii Moldova. Se constată că interzicerea purtării armelor de protecție în cadrul întrunirilor pașnice și, în mod corelativ, aplicarea răspunderii pentru nerespectarea acestei interdicții generează o ingerință în exercitarea dreptului la întruniri pașnice.

Autorul concluzionează că, dacă purtarea unei arme de protecție în timpul unei întruniri pașnice nu este susceptibilă să genereze o amenințare la adresa siguranței sau ordinii publice, atunci dreptul la întrunire pașnică nu ar trebui restrâns prin aplicarea sancțiunilor. Această concluzie este susținută de jurisprudența European Court of Human Rights.

Cuvinte-cheie: armă de protecție, libertatea întrunirilor, drept fundamental, ordine publică, siguranță publică.

Introduction. Freedom of assembly is guaranteed by a number of national and international legal acts. Among others, Art. 40 (entitled "Freedom of assembly") of the Constitution of the Republic of Moldova [1] provides: meetings, demonstrations, manifestations, processions or any other assembly are free and may be organised and conducted only peacefully and without the use of any kind of weapon.

At the same time, Art. 11 (entitled "Freedom of assembly and association") of the European Convention on Human Rights [2] provides that everyone has the right to freedom

of peaceful assembly. However, this right is not absolute. It can be limited. Specifically, Art. 11 of the European Convention on Human Rights establishes the conditions for restricting this right, i.e., the exercise of the right to freedom of assembly may not be subject to any restrictions other than those provided for by law which, in a democratic society, constitute measures necessary for national security, public safety, the prevention of disorder or crime, the protection of health, morals or the rights and freedoms of others.

As can be seen, both Art. 40 of the Constitution of the Republic of Moldova and Art. 11 of the European Convention on Human Rights guarantee peaceful assemblies. At the same time, unlike Art. 11 of the European Convention on Human Rights, Art. 40 of the Constitution of the Republic of Moldova provides that assemblies must take place without any weapons. The expression "without any weapons" also includes weapons of protection / self-defence.

Therefore, in this study we will analyse whether the prohibition of the carrying of protective weapons during peaceful assemblies is a measure compatible with the imperative of respecting freedom of assembly.

Methods and materials applied. To achieve the proposed goal, we will use:

– *The logical method*: to coherently and rationally present the issues and proposed solutions;

– *The systemic analysis method*: to comprehensively analyse the legal issues that the prohibition of carrying protective weapons during peaceful assemblies requires;

– *The comparative method*: to conduct the analysis from the perspective of other legislation.

As for the applied materials, the legal basis of the study is mainly summarized in Art. 40 of the Constitution of the Republic of Moldova and, respectively, in Art. 11 of the European Convention on Human Rights. These articles guarantee peaceful assemblies. The empirical basis of the study is the jurisprudence of the European Court of Human Rights.

Discussions and results obtained. It should be noted at the outset that there is a case heard by the European Court of Human Rights that illustrates the issue which we will discuss here, i.e. whether the prohibition of carrying protective weapons during peaceful assemblies is a measure compatible with the imperative of respecting freedom of assembly. Specifically, it is the case of Russ v. Germany. The facts are as follows.

On 18 March 2015 the newly built building of the European Central Bank (ECB) headquarters was opened in Frankfurt am Main. A broad alliance of organisations and parties organised and called for various protests during that day in Frankfurt, including peaceful blockades and a demonstration. The applicant participated in a demonstration on the morning of 18 March 2015, which included peaceful blockades, under the slogan "colourful, loud – but peaceful". For about three hours, he wore a piece of transparent plastic sheeting (relatively hard but flexible and thinner than Plexiglas), which he had fastened with a rubber band so that it covered his forehead and eyes. Several participants of the demonstration wore a similar visor. The applicant had written the words "smash capitalism" on his visor. During the demonstration the police officers present neither warned nor fined the applicant nor requested that he remove the visor. Before the start of that demonstration, from around 5 a.m. until midday, groups of individuals willing to commit acts of violence also gathered in the Frankfurt district of Ostend, where the ECB's headquarters are located and where the demonstration in which the applicant participated took place. These groups blocked a number of streets, erected barricades and then set them on fire. They also damaged a large number of cars, some of which they also set on fire. They threw stones and bottles at police officers and some attacked bystanders, fire-

fighters and emergency medical services. Other activities included damaging property, setting fire to police vehicles and inflicting bodily harm on police officers [6, §§ 5-7].

Approximately one year later, the applicant was fined 40 daily rates, each amounting to 10 euros, because, as a participant in a demonstration, the applicant had temporarily worn a plastic visor over his face to protect himself against police measures, such as the use of pepper spray. The applicant appealed against that decision. Following a hearing at which the applicant was heard, the competent court (i.e. the District Court) imposed on the applicant a cumulative fine of 60 daily rates, each amounting to 30 euros, considering a previous conviction with a related fine of daily rates. The court found that wearing the plastic visor was a violation of Germany's Public Assemblies and Processions Act, which prohibits the carrying of protective weapons at outdoor public gatherings. Referring to documentation of the legislative process, the court defined protective weapons as "objects that are used for defence against attacks and are usually given this purpose at the time of manufacture". Examples given in the documentation from the legislative process included "protective shields, self-made armour or equipment for police and/or military use (e.g. steel helmets and NBC protective gas masks) or items used in the martial arts". The District Court stated that the plastic visor, despite its simple construction, was designed to be such a protective weapon as it was capable of "preventing the eyes from being directly exposed to liquids or gases, in particular to pepper spray, and thus ensuring or at least prolonging the ability of the wearer of the plastic visor to defend himself in the event that such coercive measures are used by the police". The court further found that the visor had been designed for that purpose, since no other "civil" use of such a visor was imaginable. With regard to the inscription "smash capitalism" on the plastic visor, the court held that the purpose of the visor was not solely the expression of an opinion. Therefore, the inscription did not affect the nature of the visor as a protective weapon. The applicant could have worn the visor on the back of his head, which would have allowed him to show the inscription, but the visor would not have constituted a protective weapon [6, §§ 9-11].

The applicant appealed against that decision and the Frankfurt am Main Regional Court reduced the penalty to 10 daily rates on the grounds that the previous conviction, taken into account by the District Court, had already been served. The Regional Court otherwise found the applicant guilty of carrying a protective weapon in violation of the Act on Public Assemblies and Processions. As regards the interpretation of the term "protective weapon", the Regional Court stated: "Protective weapons are not weapons in a technical sense. They are objects that are used for defence against attacks and are usually given this purpose at the time of manufacture. The plastic sheet used by the defendant with the inscription 'smash capitalism' constitutes a protective weapon according to this definition. The sheet served to defend against pepper spray attacks in the context of coercive police measures, and not just to exercise the freedom of expression; this purpose was already assigned to it when it was manufactured, as follows from the inscription "smash capitalism". The court also rejected the possibility that the applicant had made a mistake and should thus be exempted from punishment. The fact that the police officers at the demonstration had not pointed out that it was a criminal offence to carry a protective weapon was irrelevant. Given the applicant's role as a spokesperson for the one organisation and his long-standing involvement in the demonstration scene, the Regional Court did not consider that he had made a mistake; in any event, any such mistake would have been avoidable, as he could have asked the police officers present before the demonstration for clarification on the legality of wearing the plastic visor [6, §§ 12-14].

The applicant appealed on grounds of law, which the Court of Appeal dismissed. At the same time, the Federal Constitutional Court of Germany refused to admit for examination a constitutional complaint lodged by the applicant, without giving reasons [6, §§ 15-16].

Therefore, after exhausting domestic remedies, the applicant applied to the European Court of Human Rights. The applicant complained, in essence, that his conviction for wearing a plastic visor at a peaceful assembly had violated the rights to freedom of assembly and freedom of expression. According to the applicant, the plastic visor could not be considered a weapon and did not pursue a legitimate aim, since the plastic visor was not capable of protecting him against specific and legitimate coercive measures by the police, in particular the use of pepper spray. In the applicant's view, "the criminal conviction had not been necessary in a democratic society. A criminal conviction as a sanction in the context of political acts should have only been used in exceptional circumstances. Those circumstances had, however, not existed, as he had not given any reason for enforcement measures to be used by the police against him, but had demonstrated peacefully. While criminal offences had been committed on that day in Frankfurt, this had neither taken place in the demonstration in which he had participated nor had he committed any" [6, §§ 20, 26-27].

In turn, the European Court of Human Rights has elucidated, first of all, the relationship between the right to freedom of expression and the right to freedom of association. In this regard, the European Court observed that the applicant submitted that his criminal conviction had also violated his right to freedom of expression, as the domestic courts had relied on the inscription "smash capitalism" on the applicant's plastic visor in its reasoning when assessing whether the visor constituted a protective weapon. It observed, however, that, as pointed out by the Government, the applicant was not convicted for expressing his opinion, but for wearing a "protective weapon", and that the District Court emphasised that the applicant could have expressed his opinion at the assembly in ways other than through a protective weapon. In so far as the Regional Court relied on the inscription in its judgment, the Court noted that it only did so to establish a link between the construction of the visor and its intended defensive use at the demonstration. The Court considered that there are no indications that the Regional Court punished the inscription itself in any way. Only the wearing of the "protective weapon" at the demonstration was punished by the domestic courts. The Court therefore concluded that there has been no separate interference with the applicant's right to freedom of expression. Therefore, European Court of Human Rights decided to examine the case solely under Article 11 of the Convention, which guarantees freedom of assembly [6, § 35].

After this clarification, the European Court of Human Rights recalled that in order to establish whether an applicant may claim the protection of Article 11 of the Convention, it takes into account (i) whether the assembly had been intended to be peaceful or whether the organisers had had violent intentions; (ii) whether the applicant had demonstrated violent intentions when joining the assembly; and (iii) whether the applicant had inflicted bodily harm on anyone. An individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour. The possibility of persons with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right. The mere fact that acts of violence occur in the course of a gathering cannot, of itself, be sufficient to find that its organisers had violent intentions. Even if there is

a real risk that a public demonstration may result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Art. 11 of the European Convention on Human Rights. The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities [6, §§ 36-37].

In this case, the Court considered that, while the Government submitted information about acts of violence, attacks on police officers and bystanders and other criminal offences committed on that day in Frankfurt, it was not substantiated that these acts of violence had taken place at the demonstration, entitled "colourful, loud – but peaceful", in which the applicant had participated or that they had been intended by the organisers of that demonstration. The Government also did not argue that the applicant himself had demonstrated violent intentions when joining the assembly or had inflicted bodily harm on anyone. No indications of such intentions or actions on the part of the applicant were mentioned in the domestic judgments either. While the Court took note of the violence that took place on 18 March 2015 in Frankfurt and the criminal offences committed on that day by some protestors, it considers that the Government have not sufficiently established that the specific assembly in which the applicant participated had not been peaceful or that the applicant had not been peaceful. Therefore, according to the European Court of Human Rights, the applicant's criminal conviction interfered with his right to freedom of peaceful assembly under Article 11 § 1 of the Convention [6, §§ 38-39, § 41].

Such interference gives rise to a breach of Art. 11 of the Convention unless it can be shown that it was "prescribed by law", pursued one or more legitimate aims as defined in paragraph 2 of that article and was "necessary in a democratic society" [6, § 42]. It's about the "triple test". This test is valid, with the necessary adjustments, also from the perspective of Art. 40 of the Constitution.

As to whether the interference was prescribed by law, the Court noted that the legal basis for the applicant's conviction was section 27(1) of the Act on Public Assemblies and Processions, which prescribes the criminal liability of violations of the prohibition of carrying protective weapons during public assemblies. While the Act on Public Assemblies and Processions was accessible, it is disputed by the applicant that the specific application of this provision, namely the classification of the plastic visor as a protective weapon, had been foreseeable[1]. The Court observed that, while the Act on Public Assemblies and Processions itself does not contain a definition of "protective weapon", the documentation from the legislative process, which was also publicly accessible, does include such definition and lists examples of protective weapons. Referring to that definition, the domestic courts, while acknowledging the simple construction of the applicant's plastic visor,

[1] Section 17a(1) of the Act on Public Assemblies and Processions prohibits the carrying of protective weapons or objects, suitable for use as protective weapons and, in the circumstances, intended to ward off law-enforcement measures used by a holder of sovereign power, while present at or travelling to public outdoor assemblies, processions or other outdoor public events. Subsection 3 of the provision exempts religious services and processions, pilgrimages, funerals, processions of wedding parties and traditional folk festivals from the prohibition. It also permits the competent authority to grant further exemptions where there is no reason to fear a threat to public safety or order. In accordance with subsection 4 of the provision, the competent authority is permitted to issue orders to enforce the prohibition and in particular to exclude persons from the event who violate these prohibitions.
Section 27(1) of the Act on Public Assemblies and Processions concerns the criminal liability of violations of the above-mentioned prohibition and reads, in so far as relevant, as follows: "... Any person who, 1. contrary to section 17a(1), carries protective weapons or objects that are suitable for use as protective weapons which, in the circumstances, are intended to defend against enforcement measures by a holder of sovereign power, while present] at or travelling to public outdoor assemblies, processions or other outdoor public events, ... shall incur a penalty of imprisonment for a term not exceeding one year or a fine" [apud: 6, § 18].

concluded, based on the purpose of the visor, that it constituted a prohibited "protective weapon". The Court considered that this interpretation by the domestic courts was neither arbitrary nor unpredictable. It also considers that the applicant could have asked for appropriate advice concerning the legality of the plastic visor either from a lawyer before the demonstration or a police officer during the demonstration. Moreover, the mere fact that, prior to the assembly on 18 March 2015, there had been no published court judgments directly addressing the question of whether a plastic visor should be classified as a protective weapon does not call into question the foreseeability of the ban of protective weapons. It is the role of the national courts to resolve doubts as to the interpretation of laws. In the light of the foregoing, the Court concluded that the interference complained of was "prescribed by law" within the meaning of Art. 11 § 2 of the Convention [6, §§ 44-47].

For comparison, it is worth noting that in the Criminal Code of the Republic of Moldova there is no provision that would criminalize the legal carrying of protective weapons during peaceful assemblies. Instead, Art. 129 para. (1) of the Criminal Code provides that "weapons are understood as instruments, parts or devices declared as such by legal provisions"[2]. And paragraph (2) of this article provides that "any other objects that could be used as weapons or that have been used for attack are assimilated to weapons" [3]. At the same time, Art. 361 paragraph (7) of the Code of Contraventions establishes liability for introducing, carrying, possessing or storing lethal or non-lethal weapons at meetings or in crowded places, such as stadiums, educational institutions, institutions of central public administration authorities, courts, holy places, performance halls and public gatherings, as well as in other places where the use of these weapons is prohibited by law. This contravention is sanctioned by a fine of 70 to 90 conventional units with deprivation of the right to possess or carry and use weapons for a term of 2 to 5 years [4]. Therefore, unlike Germany, in the Republic of Moldova, carrying a lethal or non-lethal weapon during peaceful assemblies is a contravention, not a crime. The sanctioning treatment of carrying protective weapons during peaceful assemblies is more lenient in the Republic of Moldova. However, according to the case law of the European Court of Human Rights, contravention relate to the notion of "criminal charge" within the meaning of Art. 6 of the European Convention on Human Rights.

After this parenthesis, regarding the legitimate aim of the prohibition on carrying protective weapons during public gatherings, the European Court of Human Rights observed that, according to the documents relating to the legislative process, a ban on protective weapons was considered necessary, since "participants who carry such protective weapons, by virtue of their martial appearance, display an obvious willingness to use violence and, according to findings in the field of crowd psychology, have an aggression-stimulating effect on the crowd. The Court was therefore satisfied that the ban of protective weapons and the applicant's conviction pursued the aims of preventing disorder and crime and of protecting the rights and freedom of others, as submitted by the Government. These aims are as such legitimate under Art. 11 § 2 of the Convention [6, § 48].

Regarding "whether the interference was necessary in a democratic society", the

[2] In this regard, the new definition of the notion of "weapon" (which will enter into force on June 30, 2026) is rendered as follows: "any object or device whose operation determines the throwing of one or more projectiles, explosive, flammable or luminous substances, incendiary mixtures or determines the dispersion of harmful, irritating, neutralizing gases or other active substances, to the extent that the respective object or device falls within one of the categories provided for in Annex No.1 to Law No.130/2012 on the regime of weapons and ammunition for civilian use". See: Art. 2 of Law No.130/2012 on the regime of weapons and ammunition for civilian use, in the drafting of Law No.301/2025 (for the amendment of Law No.130/2012 on the regime of weapons and ammunition for civilian use) [5].

European Court reiterated that he right to freedom of assembly, one of the foundations of a democratic society, is subject to a number of exceptions which must be narrowly interpreted and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 of the Convention the decisions they took. This does not mean that it has to confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Art. 11 of the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence [6, §§ 49-51].

Applying these principles to the circumstances of the present case, the Court observed that, on 18 March 2015, several acts of severe violence and vandalism were committed in Frankfurt in the context of the protests against the opening of the ECB's headquarters. It can accept that, in principle, a ban on protective weapons may contribute to the prevention of disorder and violence where participants carrying such protective weapons demonstrate an obvious willingness to use violence and where their martial appearance, even if they remain peaceful, has an effect of inciting aggression, as is apparent from the documents relating to the legislative process. However, the Court noted that, as the District Court found, the plastic visor used by the applicant was of simple construction. Relying on the documents relating to the legislative process, the Government argued that, notwithstanding this simple construction, the visor, and other similar visors which had been worn by several participants, had had an aggression-stimulating effect and had therefore constituted a threat to public safety. This aggression-stimulating effect had contributed to the violent acts that took place on that day in Frankfurt. In the Court's opinion, the national courts considered only whether the visor could protect the applicant from pepper spray and for what purpose the visor had been constructed. Apart from stating that no other "civil" use of such a visor was conceivable, the courts did not assess in their judgments whether the applicant's visor had posed a threat to public safety. The courts likewise did not refer to an aggression-stimulating effect, as asserted by the Government in reference to the legislative material, nor did they elaborate on whether they considered that the applicant, by wearing the visor, had demonstrated an obvious willingness to use violence. While a threat to public safety and order, as explained in the

legislative documents, may be apparent for some objects and constructions falling under the definition of "protective weapons", such as the examples listed in the documentation, such as protective shields, martial arts equipment, steel helmets or NBC protective gas masks, very simple constructions would require a special assessment by the criminal courts. In the Court's view, the applicant's visor, which had been constructed with a piece of transparent plastic sheeting (relatively hard but flexible and thinner than Plexiglas) and a rubber band, falls into the latter category [6, §§ 52-53].

In this regard, the Court also noted that section 17a(3) of the Act on Public Assemblies and Processions permits the competent authority to grant exemptions from the ban on protective weapons where there is no reason to fear a threat to public safety or order. In the present case, the national courts did not examine whether the conditions for such an exemption were met before imposing a criminal conviction on the applicant [6, § 54].

Regarding the sanction, European Court noted that, while the monetary penalty was at the lower end of possible fines, it was nonetheless a criminal sanction and not an administrative fine. The Court also observed that no order under section 17a(4) of the Act on Public Assemblies and Processions was made by the competent authority to enforce the prohibition of "protective weapons" during the demonstration, in particular, the applicant was not ordered to take off the visor. Neither did the courts explain why such an order would not have been suitable to prevent violence or disorder [6, § 55].

In the context of what has been elucidated, the European Court reiterated that criminal sanctions require special justification and that, in principle, a peaceful demonstration should not be rendered subject to the threat of criminal sanctions. When considering the criminal liability of a demonstrator, criminal courts must take into account the right to freedom of assembly and decide whether a criminal conviction is proportionate and "necessary in a democratic society" within the meaning of Art. 11 of the Convention. This requires the national criminal courts to assess the entire circumstances of the specific demonstration, the legitimate aims of the ban on "protective weapons" and the exemptions from the ban as provided by the relevant national law. The Court considered that the national courts, while they took into account the applicant's freedom of expression, they did not balance the applicant's right to freedom of assembly with the legitimate aim of preventing disorder and violence; nor did they assess the specific circumstances of the demonstration. In the particular circumstances of the case, the Court considered that the domestic courts failed to explain why the carrying of the simple visor constituted a threat to public safety which rendered the applicant's criminal conviction necessary in a democratic society [6, § 56].

The foregoing considerations were sufficient to enable the Court to conclude that the reasons adduced by the national courts to justify the applicant's criminal conviction were not sufficient. It therefore concludes that the interference cannot be considered "necessary in a democratic society". There has accordingly been a violation of Art. 11 of the Convention [6, § 57], article that guarantees freedom of assembly.

It should also be noted that the applicant also complained under Article 7 of the Convention (which guarantees the principle of the legality of the criminal offence and the legality of the penalty), i.e., that the domestic courts had exceeded the limits of acceptable interpretation when interpreting the term "protective weapon" and that the plastic visor he had worn was not prohibited by Act on Public Assemblies and Processions. In view of its findings under Art. 11 of the Convention concerning the legal basis of the interference, the Court founds this complaint, however, manifestly ill-founded and declared it inadmissible [6, §§ 59-60].

The approach of the European Court of Human Rights to Art. 11 of the Convention has been criticized by some authors. For example, F. Kriener noted that "the Court's judgment is puzzling. Its central point of critique is the lacking reasoning by the national courts and their failure to demonstrate that the plastic visor was dangerous in the specific circumstances. However, German law (...) does not require a specific assessment of the danger posed by a protective weapon. To the contrary, the requirements of German law are fulfilled if a person knowingly carries a protective weapon during an assembly. The law therefore only obliges German courts to assert whether an object qualifies as a protective weapon (objective element) and then, in a second step, to assess whether this weapon was knowingly carried at an assembly (subjective element)". The same author emphasized that the district and regional courts thus applied the law as it currently stands and as interpreted by the higher courts. Introducing an additional requirement – such as an "actual danger to public safety" to qualify an item as a protective weapon – would contradict the wording of the German law and the jurisprudence of the Federal Court of Justice. According to the cited author, the European Court of Human Rights criticism of the district and regional courts for insufficient reasoning is therefore misplaced. According to him, the critique should instead have been directed at the expansive interpretation of "protective weapon" under German law. The author concludes that German law does not provide an adequate legal basis because they employ an overly broad notion of "protective weapon", which results in a law that is not sufficiently foreseeable and does not balance the competing rights and interests sufficiently [7].

In order to reach this conclusion, F. Kriener made an X-ray of the specialized literature in Germany, highlighting the solutions proposed by it. Thus, it was shown that German law was too wide and criminalizing protest too heavily. In particular, some authors have suggested raising the threshold for the subjective element. Rather than merely requiring that the individual knowingly carried the protective weapon, they propose a more stringent standard – namely, the intent to use the weapon in response to actions by law enforcement officers. Similarly, a more restrictive definition of what constitutes a "protective weapon" could be considered. Such a definition would prohibit only major protective gear – such as shields and gas masks – while permitting the use of minor items like goggles, FFP2 masks, or mouthguards. Another approach to restricting German law in question would be to introduce an individual "balancing test", requiring a proportionality assessment between the interference and the right to peaceful assembly [7].

Therefore, in this case, it is suggested that the criminal law has been used excessively (to the detriment of the freedom of peaceful assembly) and that this consequence should be attributed to the legislator, but not to the judge. Of course, this opinion has the right to exist. However, we consider it impossible for the legislator to establish an exhaustive list of objects that would constitute "protective weapons". The principle of generality has been given precedence.

Another author noted that the European Court of Human Rights' judgment in Russ v. Germany will remain a cornerstone for the right to freedom of assembly in Germany [8]. This statement is valid for all member states of the Council of Europe.

Conclusions. The prohibition of carrying protective weapons during peaceful assemblies and, correlatively, the application of liability for defying this prohibition generate an interference with the right to peaceful assemblies, a right guaranteed, among others, by Art. 40 of the Constitution of the Republic of Moldova, and by Art. 11 of the European Convention on Human Rights guarantees peaceful assemblies.

However, the right in question is not absolute. It can be restricted. But the restric-

tions must be provided for by law, pursue a legitimate aim and be necessary in a democratic society. The last requirement is the most problematic; it implies a justification on a case-by-case basis. Moreover, criminal sanctions require a special justification, and in principle, a peaceful assembly, demonstration should not be subject to the threat of criminal sanctions.

Finally, it is clear that exceptions to the prohibition on protective weapons must be granted where there is no reason to fear a threat to public safety or order. In other words, if the carrying of a protective weapon during a peaceful assembly is not likely to create a threat to public safety or order, then the right to peaceful assembly must not be restricted by the application of sanctions. This is the message of the European Court of Human Rights in the case of Russ v. Germany. This message must be heard by all Member States of the Council of Europe.

Bibliographical references

1. Constitution of the Republic of Moldova. Available: https://presedinte.md/app/webroot/Constitutia_RM/Constitutia_RM_RO.pdf (accessed 16.04.2026).
2. European Convention on Human Rights. Available: https://www.echr.coe.int/documents/d/echr/convention_ron (accessed 16.04.2026).
3. Criminal Code of the Republic of Moldova. Available: https://www.legis.md/cautare/getResults?doc_id=153355&lang=ro# (accessed 16.04.2026).
4. Contravention Code of the Republic of Moldova. Available: https://www.legis.md/cautare/getResults?doc_id=153681&lang=ro (accessed 16.04.2026).
5. Law of the Republic of Moldova No.130/2012 on the regime of weapons and ammunition for Civilian Use. Available: https://www.legis.md/cautare/getResults?doc_id=152951&lang=ro (accessed 16.04.2026).
6. Case of Russ v. Germany, Application No.44241/20, Judgment of 20 May 2025. Available: https://hudoc.echr.coe.int/eng?i=001-243184 (accessed 16.04.2026).
7. Kriener F. Russ v Germany: On broad definitions in the regulation of peaceful assemblies. Available: https://strasbourgobservers.com/2025/09/16/russ-v-germany-on-broad-definitions-in-the-regulation-of-peaceful-assemblies/ (accessed 16.04.2026).
8. Bücker J. The Questionable Concept of Protective Weapons: How Strasbourg Pushes Back Against Protest Restrictions in Germany. In: VerfBlog, 2025/6/03, Available: https://verfassungsblog.de/the-questionable-concept-of-protective-weapons/. DOI: 10.59704/9fac16047c53cc7f (accessed 16.04.2026).

CZU 343.351 **DOI: https://doi.org/10.5281/zenodo.20808161**

CORRUPTION 2.0 – PHENOMENON AND CRIME

Cristian POPA,
PhD, Associate Professor,
"Alexandru Ioan Cuza" University of Iasi,
Romania
ORCID: 0009-0009-0798-3285

Veronica MIHALACHE,
PhD, Associate Professor,
University of Bucharest,
Romania
ORCID: 0009-0002-9028-0204

Abstract

This paper aims to analyze the main aspects that aim at a psychosocial approach to corruption, therefore as a psychosocial phenomenon, which extends to most levels of society, and represents a deviation from the norms and regulations imposed by society.

We have focused our attention on measures to prevent and combat this phenomenon. We believe that the panoply of appropriate and adapted normative acts to those sectors that have proven to generate corruption can be complemented by substantial steps to inform and raise awareness among citizens, more precisely, to educate young citizens, young people, who are fundamental to creating a solid culture of personal and organizational integrity, precisely because, as specialized studies show, the factors that seem to underlie corruption can be comparable to the factors that underlie the lack of integrity in general.

Together, Romania and the Republic of Moldova can identify, through European funds, joint projects to counter the phenomenon of corruption – as a basis for compatibility and by virtue of an educational tradition, as a renowned specialist from the Republic of Moldova appreciates – by investing everything necessary in young human resources. From our point of view, we are guided by a fundamental question: How do we put a moral compass in the hands of children and young people, to ensure their hope for a lasting and sustainable future?

Keywords: corruption, deviance, social norms, moral norms, measures to prevent corruption, measures to combat corruption, European funds.

CORUPȚIA 2.0 – FENOMEN ȘI INFRACȚIUNE

Abstract

Această lucrare își propune să analizeze principalele aspecte ce vizează o abordare psihosocială asupra corupției, deci ca fenomen psihosocial, ce se extinde la majoritatea nivelurilor societății, și reprezentând o deviață față de norme și reglementări impuse de societate.

Autorii și-au concentrat atenția asupra măsurilor de prevenire și combatere a acestui fenomen. Apreciem că panoplia actelor normative adecvate și adaptate acelor sectoare, care s-au dovedit generatoare de corupție, poate fi completată cu demersuri substanțiale de informare și conștientizare a cetățenilor, mai exact, de educare a micilor cetățeni, a tinerilor, fundamentale pentru crearea unui culturi solide a integrității personale și organizaționale, tocmai pentru că, așa cum arată studiile de specialitate, factorii care par să stea la baza corupției pot fi comparabili cu factorii care stau la baza lipsei de integritate, în general.

Împreună, România și Republica Moldova pot identifica, prin intermediul fondurilor europene, proiecte comune de contracarare a fenomenului corupției - ca bază de compatibilitate și în virtutea unei tradiții educaționale, după cum apreciază un reputat specialist din Republica Moldova - investind orice este necesar

în resursa umană tânără. Din punctul nostru de vedere, suntem ghidați de o întrebare fundamentală: Cum punem în mâinile copiilor și tinerilor busola morală, astfel încât să le asigurăm speranța într-un viitor durabil și sustenabil?

Cuvinte-cheie: corupție, devianță, norme sociale, norme morale, măsuri de prevenire a corupției, măsuri de combatere a corupției, fonduri europene.

Introduction. This paper aims at a psychosocial approach to corruption, therefore as a psychosocial phenomenon, which extends to most levels of society, and represents a deviation from the norms and regulations imposed by society, different from that of a scientific legal perspective. Previously, Cristian Popa and his team published the work "Corruption: phenomenon and crime", edited in two volumes, a consistent work that addressed this dual aspect of the corruption problem from the theoretical aspect of criminology and criminal law and contained references to the normative-legal, social and historical aspect of the subject, as well as comparative analyses of the legislation of other states and the study of the positive expertise accumulated by the international, European community in countering this phenomenon. Now, we propose to add another perspective, of a socio-human nature, appreciating that the term corruption is much more comprehensive than that defined by the criterion of criminal law, representing a true "barometer" that measures the state of legality, normativity and morality of society.

We also do not intend to emphasize with scientific precision the operationalization of the concept underlying our analysis for the simple reason that the phenomenon of corruption is a "common practice, especially in public institutions", is "a problem of the system", is a "national sport", "has existed since the beginning of time, in all more or less democratic societies" and for which "no one has yet found a solution with guaranteed effectiveness for reducing and, ultimately, eliminating corruption from the life of society". These are answers extracted from research conducted in Romania and general assessments identified in some exhaustive studies in the Moldovan specialized literature.

In another vein, the metaphor we use – Corruption 2.0 – is also supported by the resumption of the fight against corruption in Romania, the drastic limitation of this phenomenon by coordinating the efforts of institutions, including intelligence services, as reflected in one of the national security objectives stated in the National Defense Strategy for the period 2025-2030 [12], noting, at the same time, a mirror vision in the National Security Strategy of the Republic of Moldova [13], both being oriented towards regaining the trust of society and creating sustainable and efficient government institutions. As such, together, Romania and the Republic of Moldova could identify, also in this context, joint projects to counter the phenomenon of corruption by accessing non-reimbursable European funds, as a basis for compatibility and by virtue of an educational tradition, investing whatever is necessary in young human resources.

Discussions and results obtained. The Phenomenon of Corruption as Deviance and the Theory of Social Control [2]. Deviance is a maladaptation that manifests itself through behavioral deviations from basic social norms and values. Both individual and social maladaptation's are forms that are encountered throughout the historical course of the organization of social life.

Society evaluates the behaviors of its members as normal only if they are consistent with unanimously recognized norms and values, with a margin of error that must tend to zero. Norms, both moral and legal, are established as benchmarks in most social situations governed by normality.

S.M. Rădulescu says about people that "... by doing what all members of the group

do, they obtain recognition, identity and personal security". Violation of norms brings not only opprobrium and insecurity on an individual level, but also punitive, coercive measures, therefore, deviance represents "an impermissible, abnormal tendency, negatively valued by the fact that it prevents the normal development of group life" [10, p. 13]. Deviance can be explained as the set of behaviors that threaten the balance of the social system.

Corruption, as a psychosocial phenomenon that extends to most levels of society, represents a deviation from the norms and regulations imposed by society. As an expression of the imbalance between social norms and personal goals, corruption is externalized through "symptoms". The symptoms of deviance are manifested through psychological suffering caused to other people, criminal acts, sociopathic behaviors, etc., and the "symptoms" of corruption are manifested through favoritism, nepotism, bribery, blackmail, etc.

From a sociological point of view, both deviance and corruption go beyond the boundaries of the person, by exerting influence on interpersonal relationships, modifying the status of the person. Such changes with negative valences induce, in turn, influences on members of the entourage and even at the level of society. As has been observed from research on corruption, people are beginning to perceive it as something normal, inherent in the way of interpersonal interaction and it is precisely through this side that it manifests its harmfulness.

Deviance, as a type of behavior that opposes the conventional one, includes not only violations of the law (crimes, misdemeanors), but also any deviation from the rules of coexistence and the imperatives of order of a form of collective life: group, organization, institution, society, culture, etc.

Cătălin Zamfir differentiates between deviance and abnormality in that "in its essence, as a manifestation that offends the feelings and expectations of the community", deviance is distinguished from abnormality in that the latter is about "the individual's inability, accepted and medically validated, to adapt to the demands of social life and to adequately exercise social roles" [11, p. 167]. Some of the manifestations of deviance, but also of corruption, could be considered as "specific products" of the living conditions characteristic of contemporary society, which have generated and continuously generate "alternative modes of behavior", as natural reactions to the tendencies to manipulate and hierarchize the members of society.

According to Ronald L. Akers [1], deviant behavior of individuals is determined not so much by individual motivations, but by a series of organizational factors. A basic element that defines deviance at the level of social control agencies is represented by the illicit acquisition of material advantages (financial or other), as well as of positions of power or prestige for the benefit of the members of these agencies by violating the public interest, a notion that should represent the fundamental purpose of the activity of the mentioned agencies. The most frequent characteristic of deviance in this field is not only the engagement in phenomena of fraud and corruption, but also in various decisions capable of affecting, to the greatest extent, desirable social interests and goals. One of the most important contributions in this field was made by the well-known American sociologist Edwin Sutherland [3], who developed the notion of "deviant organization" in opposition to that of deviant individual. This notion, identified by several authors with the concept of "organizational deviance", has been used in various sociological or criminological conceptions that have sought to explain the reasons why certain organizations (institutions) engage, more than others, in a series of illicit activities, using illegal norms or means or promoting illegitimate methods or means to achieve legitimate social goals from the point

of view of normative expectations. It is also worth mentioning that this notion has been widely accepted by sociologists or criminologists but has been less frequently treated as a study variable.

David Ermann and Richard Lundman distinguished, in this sense, four main features of organizational corruption:

1. Acts of corruption must be supported by the internal norms that characterize the organizational culture of the respective social control agency;

2. Acts of corruption must be legitimized and justified by each new member who comes to the organization, through a socialization process, in which the "novices" learn the norms, values, and codes of conduct specific to the respective organizational cultures;

3. Acts of corruption must be supported by the members who work and effectively fulfill the goals of the organization;

4. The same acts of abuse and corruption must be supported, at the same time, by the dominant administrative "coalition" of the respective organization [4].

Organizational deviance occurs when the theft committed by a member of the organization is compatible with its real purpose, to maintain internal harmony with the help of "informal income" or by exploiting the organization's resources for the personal benefit of the organization's employees.

The problem of corruption, as a symptom [8, p. 75] in such social control agencies is one of the most debated topics in the works dedicated to organizational deviance. These works generally postulate three main theoretical models of corruption within social control agencies:

1. The participatory model or the co-optation of subjects, over whom social control is exercised, in the development of the decision-making policy of the respective social control agency. Once "co-opted" into the social control agency, the subjects in question can change the formal goals of the organization (agency), making it adopt deviant goals.

2. The model of "capturing" social control agencies for the benefit of external users or exploiters. This model refers, for example, to the use (exploitation) of the main resources of social control agencies for the benefit of politicians who use them as a "commodity" of exchange, to obtain funds necessary to support the electoral campaign from organizations or networks with illicit purposes.

3. The model of "dominance" exercised by internal exploiters of the resources of social control agencies. This model refers to the dominant administrative coalition of the social control agency, which directs the activity of the institution in its own interest, and which takes advantage of any violation of its legal purposes to obtain personal benefits.

The more social control agencies depend on the subjects they control to achieve their formal legitimate goals, the more likely it is that corruption will occur through the co-optation of these subjects.

Social control is a planned or unplanned process by which people are taught, convinced and even forced to conform to norms.

For social control at the informal level, the reactions of others are essential, and when certain attitudes of those around them are understood and internalized, that is, assumed, accepted and mastered, social control turns into self-control, which is determined by socialization.

In conclusion, informal social control is achieved through the same mechanisms through which socialization takes place. Social control can also be defined as the way in which society prevents deviance and punishes those who violate norms [7, pp. 113-156]. In a broader sense, through social control, society establishes all the norms that, taken

together, give the culture of that society.

In scientific literature, theories of social control are divided into two distinct branches [6]. On the one hand, theories of control proper, which state that all internal impulses that can push the individual towards deviance (anger, greed) and all external pressures (poverty, deviant subcultures, certain blockages of opportunities) are controlled by a first "ring" of individual resistance, consisting of the individual's character traits and certain internalized norms and values, and a second "ring", the social one, which regulates the individual's behavior through social connections, interactions and tensions. The two "rings" can function simultaneously or separately, only one of them, or even neither.

Based on the theories stated, the main components of social control have been identified, namely, attachment to others, especially to guiding models, such as:

a) Parents, educators or strong personalities of the peer group;

b) Commitment to the main institutions, such as school, state organizations, workplace;

c) Involvement in various social activities and recourse to conventional lines of social action;

d) Belief in the norms of society, in the sense of assuming them and conforming to them, accompanied by their acceptance in private life [5].

Considering the above, it can be stated that, at a formal level, control means more than criminal legislation in the field. This type of control means institutions empowered to control the behavior of all individuals, from those with responsibility, to simple executors or even delinquents, or sociopaths.

However, in an anomic society [9], informal social control is particularly weak, and this observation leads us to think about the situation in which, in the context of such profound institutional transformations, maintaining control at the formal level, the final expression of which is in criminal legislation, is almost impossible.

Attempts to control corruption have resulted in improving informal control and increasing formal social control, through the selective appropriation of external values. Additionally, through a series of impact interventions in terms of mentalities, education is carried out through internalization of group values that have the force of a positive example and have the ability to consolidate foundations of thinking in accordance with social norms, so that they can control, from within, the immense temptations that the explosion of freedom has brought and that offer illicit paths, much easier to follow, in order to occupy a higher status, which currently means, above all, money.

Shared Strategic Vision – Opportunities for Cooperation? In Romania, for the period 2025-2030, the National Defense Strategy reiterates the need to fight corruption, to drastically limit this phenomenon by coordinating the efforts of institutions, including intelligence services, as reflected in one of the stated national security objectives. Specifically, an integrated approach to the phenomenon is intended, through joint efforts of all responsible institutions and through the efficient use of available data; the involvement of intelligence services in collecting data documenting possible acts of corruption, without their interference in the criminal investigation and the justice process; and the correction of legislative and administrative mechanisms that delay the achievement of justice in matters of corruption, while respecting the separation of powers in the state and constitutional norms.

Upon careful review of the National Security Strategy of the Republic of Moldova, we also identify consistent specifications of combating corruption among the national security objectives of the Republic of Moldova and directions of action in various areas, such

as "public order and security" or "democratic resilience". Therefore, we identify a mirror image, both documents of great strategic importance being oriented towards regaining the trust of society and creating sustainable and efficient government institutions.

Translating these national security objectives into concrete and coherent action plans and activities could constitute as many measures as possible to prevent and combat this phenomenon. We appreciate that the panoply of appropriate normative acts adapted to those sectors that have proven to generate corruption can be complemented with substantial efforts to inform and raise awareness among citizens, more precisely, to educate young citizens, young people, fundamental for creating a solid culture of personal and organizational integrity, precisely because, as specialized studies show, the factors that seem to underlie corruption can be comparable to the factors that underlie the lack of integrity, in general.

Therefore, we consider as auspicious measures such as establishing a partnership between public authorities with civil society and representatives of the private sector, informing and raising awareness of citizens regarding the causes and consequences of corruption, but also regarding citizens' rights when faced with corruption cases, conducting scientific activities to diagnose and forecast the phenomenon of corruption, or conducting information and awareness campaigns on ethical behavior, both at the individual and social levels.

Conclusions. Given the ever-widening area, complexity and continuous diversification of the forms of manifestation of the phenomenon of corruption, it goes without saying that scientific assessments, theoretical and applied reflections can contribute to improvements in the social and civic environment, to the effective harmonization of the relationship between the state and the citizen. Identifying the most sensitive points of this phenomenon and, implicitly, their constant fixation on the public agenda constitutes as many possibilities as possible for restoring citizens' trust in the structures of power and authority, to maintain a fair social climate, avoid social polarization and recognize institutional authority.

The tension between the individual and society can explain the criminal state only if it is accompanied by a cultural structure that promotes justifications against inequality. In the current period, social changes have made the idea of equality deeply mark citizen's sense of justice.

Bibliographical references

1. Akers R., Krohn M.D., Lanza-Kaduce L., Radosevich M. (1979). Social Learning and Deviant Behavior: A Specific Test of a General Theory. In: American Sociological Review, Vol. 44, No.4, pp. 636-655.
2. This section contains excerpts published in the study entitled "Considerente sociologice în privința corupției şi crimei organizate". In: Chiș I., Popa C., Ștefan T. (2009). Corruption. Phenomenon and crime. Bucharest: Publisher "Mihai Viteazul" National Intelligence Academy, Vol. I, pp. 47-60.
3. Cusson M. (1995). Deviance. In: Boudon, R. (coord.), Treatise on sociology. Bucharest: Humanitas Publishing House.
4. Ermann M.D., Lundman R.J. (2002). Corporate and Governmental Deviance: Origins, Patterns and Reactions. In: M.D. Ermann and R.J. Lundman (coord.), Corporate and governmental deviance: Problems of organizational behavior in contemporary society. Oxford University Press, 6th Edition, pp. 3-49.
5. Ionescu C., Butoi T., Mierlea S. (2019). Elemente socio-juridice de control social pe

terenul devianţei speciale. Perspectivă socio-juridică şi psihologică asupra lumii interlope şi crimei organizate. Editura P.B.S.
6. Ogien A. (2002) Sociologia devianței. Iaşi, Polirom.
7. Popescu R.D., Văduva C.M. (2020). Sociologie juridică. Clarificări conceptuale și aplicații. București: Editura Hamangiu, pp. 113-156.
8. Rădulescu M.S. (1994). Teorii sociologice în domeniul devianței și al problemelor sociale, p.75. Disponibil: https://biblioteca-digitala.ro/reviste/carte/Institutul-Sociologie/RADULESCU_Teorii-sociologice-domeniul-deviantei-problemelor-sociale_1994.pdf (vizitat 14.04.2026).
9. Rădulescu M.S. (1999). Devianță, criminalitate şi patologie socială. Bucureşti: Editura Lumina Lex.
10. Rădulescu M.S. (1991). Anomie, devianţă şi patologie. București, Editura Hyperion XXI, p. 13.
11. Zamfir C. (1993). Structurile gândirii sociologice. București: Editura Politică, p. 167.
12. Strategia Națională de Apărare a Țării pentru perioada 2025-2030. Disponibil: https://www.presidency.ro/files/userfiles/Strategia%20Na%C8%9Bional%C4%83%20de%20Ap%C4%83rare%20a%20%C8%9A%C4%83rii%20pentru%20perioada%202025-2030.pdf (vizitat 04.04.2026).
13. Strategia securității naționale a Republicii Moldova. Disponibil: https://presedinte.md/app/webroot/uploaded/Proiect%20SSN_2023.pdf (vizitat 24.04.2026).

CZU: 342.9 **DOI: https://doi.org/10.5281/zenodo.20808552**

FUNDAMENTAL PRINCIPLES GOVERNING THE ADOPTION OF ADMINISTRATIVE ACTS: A GUARANTEE OF THE LEGALITY AND EFFICIENCY OF ADMINISTRATIVE ACTIVITY

Ștefan BELECCIU,
PhD, University Professor,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-0786-8713

Ivan SÎRBU,
PhD Student,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0003-3099-8465

Abstract
This article examines the fundamental principles governing the three-phase process of the administrative act — drafting, adoption/issuance, and application — from the perspective of administrative law doctrine in the Republic of Moldova and Romania. The study systematically analyses, for each phase, the principles that confer legitimacy, legality, and efficiency: legality, competence, and expediency in the drafting phase; motivation, proportionality, the right to a hearing, transparency, and equality in the adoption phase; mandatory force, communication/publication, revocability, and judicial review of legality in the application phase. The central conclusion is that compliance with these principles is not a discretionary option for the administration, but a legal obligation guaranteeing individual rights and the proper functioning of the rule of law.

***Keywords**: administrative act, principles of administrative law, legality, competence, proportionality, motivation, expediency, administrative procedure, judicial review.*

PRINCIPIILE FUNDAMENTALE CARE GUVERNEAZĂ ADOPTAREA ACTELOR ADMINISTRATIVE: GARANȚIE A LEGALITĂȚII ȘI EFICIENȚEI ACTIVITĂȚII ADMINISTRATIVEA

Abstract
Prezentul articol examinează principiile fundamentale care guvernează procesul trifazic al actului administrativ — elaborare, adoptare/emitere, aplicare — din perspectiva doctrinei juridice din Republica Moldova și România. Pornind de la funcțiile principiilor în dreptul administrativ, studiul analizează sistematic, pentru fiecare fază a actului administrativ, principiile care îi conferă legitimitate, legalitate și eficiență: legalitatea, competența și oportunitatea în faza de elaborare; motivarea, proporționalitatea, dreptul la apărare, transparența și egalitatea în faza de adoptare; obligativitatea, comunicarea/publicitatea, revocabilitatea și controlul legalității în faza de aplicare. Concluzia centrală este că respectarea acestor principii nu constituie o opțiune discreționară a administrației, ci o obligație juridică ce garantează drepturile persoanelor și buna funcționare a statului de drept.

***Cuvinte-cheie**: act administrativ, principii de drept administrativ, legalitate, competență, proporționalitate, motivare, oportunitate, procedură administrativă, control jurisdicțional.*

Introduction. Principles of law represent, in the classical view of the general theory of law, "the general ideas, guiding postulates or directive precepts underlying the entire legal system of a country, orienting legal regulations and the application of law" [1, p.25]. They do not constitute mere theoretical recommendations, but rather ideas endowed with their own normative force, which guide, supplement, and correct the application of legal norms, conferring coherence and predictability upon the legal system.

The practical importance of principles is analyzed by professor N. Popa in two essential dimensions: on the one hand, principles "ensure the unitary construction of the legal system" [2, p.23], constituting a primary technical instrument in the legislative drafting process; on the other hand, they acquire a cognitive dimension, contributing decisively to the understanding and correct application of legal norms in concrete cases [3, p.151].

Administrative law, as a fundamental branch of public law, presents a remarkable particularity in this respect: as emphasized in legal doctrine, it lacks a unitary codification and is characterized by significant legislative dynamism. Precisely for this reason, principles occupy a particularly important place in administrative law — they ensure the continuity and coherence of the system where written norms are absent or insufficient. As highlighted in the specialized literature, "due to the mobility, multiplicity and fragmentation of legislative provisions in administrative matters, the need arose to move from the mere knowledge of legal texts to the study of principles".

The present study aims to systematically analyze the fundamental principles governing the administrative act in the three phases of its existence: drafting, adoption/issuance, and implementation. Elements of comparative law are organically integrated into the analysis of each principle in order to reveal the convergences and particularities of the two legal systems.

Discussions and results obtained. I. Principles of Administrative Law: General Considerations. 1.1. The Concept and Functions of Principles in Administrative Law. The term principle derives from the Latin principium, meaning beginning or origin, designating, in the legal sense, a fundamental element of the legal system. In the opinion of professor Gh. Boboș, "by principle of law we understand both a foundation of the legal system and a means of coordinating legal norms around guiding ideas" [4, p.186]. Starting from this definition, principles appear not as isolated norms, but as structuring ideas that confer unity and direction upon the entire legal edifice.

The general theory of law has identified three levels of generalization of legal principles [5, p.35-51]:

1. Principles of the entire legal system — applicable to all branches of law;
2. Principles of branches of law — specific to administrative, civil, criminal law, etc.;
3. Principles of legal institutions — applicable to specific institutions such as the administrative act or administrative litigation. The principles examined in the present study belong predominantly to the second and third levels.

With regard to their functions, the principles of administrative law fulfill three essential roles. First, the law-creating function: they guide the legislator in drafting legal norms, ensuring the internal coherence of the normative system. Second, the interpretative function: in the presence of ambiguous or contradictory norms, principles provide the criterion for the correct interpretation of legislative intent. Third, the integrative function: in the case of legislative gaps — frequent in administrative law — principles allow for application by analogy and the completion of the normative system.

A distinction must be made between "principles expressly contained in a normative act and those inferred from several normative acts through generalization" [6, p.125]. This

distinction is essential in administrative law, where numerous principles — such as the revocability of administrative acts — are not explicitly codified, but are deduced from the entirety of regulations in the field. Both in the Republic of Moldova and in Romania, these principles of jurisprudential and doctrinal origin have gradually acquired the force of positive legal rules.

1.2. Categories of Principles Applicable to the Administrative Act. The analysis of the principles governing the administrative act requires a systematic classification intended to reveal their diversity and complementarity. Based on the criterion of their legal nature, doctrine distinguishes three major categories:

Substantiale principles — concern the content of the administrative act and the substantive conditions of its validity. This category includes: the principle of legality, the principle of proportionality, the principle of equality and non-discrimination, and the principle of good faith. These principles determine what an administrative act may or may not contain, establishing the substantive limits of administrative discretionary power [7, p.9].

Procedural principles — concern the manner in which the administrative act is drafted and adopted. This category includes: the principle of competence, the principle of reasoning, the principle of the right to defense, and the principle of transparency. These principles determine how the administration must act, regardless of the content of the act it intends to issue [8, p.87].

Principles of efficiency — concern the results of administrative activity, ensuring that issued acts are not only lawful but also capable of producing the intended effects in the public interest. This category includes: the principle of expediency, the principle of efficiency, and the principle of effectiveness. The particularity of these principles lies in the fact that they are not subject to judicial review of legality, but rather form the object of internal administrative control [9, p.151-154.

This tripartite classification — adopted and adapted from French, German, and European doctrine — is today accepted both in the doctrine of the Republic of Moldova [10, p.134] and in Romanian doctrine and constitutes the framework of reference for the following analysis.

II. Fundamental Principles in the Phase of Drafting the Administrative Act. 2.1. The Principle of Legality: Foundation of Drafting the Administrative Act. The principle of legality represents the backbone of the entire administrative activity. It requires that every administrative act have a legal basis, comply with the normative hierarchy, and not contradict higher-ranking legal norms. As professor Maria Orlov points out, the principle of legality means that "public authorities, including administrative authorities, in their activity must be guided by the provisions of the law and may issue legal acts only in accordance with and on the basis of the law" [7, p.10].

Doctrine distinguishes two dimensions of the principle of legality in the drafting of the administrative act. The substantive dimension requires that the content of the act comply with legal provisions and superior normative acts, viewed through the prism of the trichotomous structure of the legal norm — hypothesis, disposition, and sanction. The administrative body is obliged to issue the act when the factual conditions provided by law are fulfilled and to refrain from doing so when they are absent [11, p.32-35].

The formal dimension — consecrated by Professor Antonie Iorgovan as "legality from the perspective of the authority from which the act emanates" — requires that every general or individual measure emanate from the legally competent authority. This dimension organically intersects with the principle of competence, which it foreshadows [9, p.48].

An essential characteristic of the principle of legality is the non-retroactivity of administrative acts. As a general rule, administrative acts produce effects only for the future — ex nunc — from the date of their entry into force. Exceptions are admitted only in cases expressly provided by law or when they are favorable to the individual [8], p.90. Non-retroactivity protects the legal certainty of the addressees of administrative acts and prevents abuse of power through regulations with retroactive effects.

Both in the Republic of Moldova and in Romania, the principle of legality is constitutionally enshrined and constitutes the basis of any administrative litigation action. The particularity of the Moldovan system, emphasized by professor Cobăneanu, lies in the fact that "the application of the principle of legality encounters difficulties related to insufficient knowledge of the legislation in force and the slow overcoming of the difficulties in its application" — a reality that makes the principle all the more important to invoke and strengthen [10, p.140].

2.2. The Principle of Competence: A Condition for the Validity of the Act

Competence represents the totality of powers conferred by law upon administrative authorities, constituting both a right and an obligation of the issuing authority. Unlike capacity in private law, administrative competence is inalienable and permanent: it is not exhausted through exercise, cannot be transferred without legal basis, and depends not on the will of the authority, but on the will of the legislator.

Three forms of administrative competence may be distinguished, each determining a dimension of the validity of the act: material competence (ratione materiae) — the sphere of powers defined according to the object of activity; territorial competence (ratione loci) — the geographical limits within which the authority may act; personal competence (ratione personae) — powers linked to the office held. Failure to comply with any of these forms entails the nullity of the act.

Exceeding competence — known in doctrine as abuse of power — constitutes one of the most frequent grounds for annulment of administrative acts through administrative litigation. In the administrative practice of the Republic of Moldova, abuse of power manifests itself both through usurpation of competence — when an authority issues acts exceeding its legal powers — and through misuse of power — when the act is issued within the formal limits of competence, but for a purpose other than that provided by law.

Professor Lucia Catană adds, from the perspective of Romanian law, that an authority may not evade the obligation to issue an administrative act when the legal conditions are met: the unjustified refusal to resolve a request concerning a right recognized by law constitutes in itself an illegality, liable to challenge before the administrative courts [12, p.116].

2.3. The Principle of Expediency in the Initiation Phase. The principle of expediency concerns not the legality of the act, but the quality of the choice made by the administration in exercising its discretionary power: the choice of the moment, means, and optimal manner of intervention. Professor Ilie Iovănaș defines expediency as "the fulfillment of legal duties and powers within an optimal time frame, with minimal expenditure of material and spiritual resources, but with maximum efficiency, as well as the selection of the most appropriate means for achieving the purpose of the law" [13, p.9].

The relationship between legality and expediency is one of complementarity, not of alternativity. Doctrine unanimously emphasizes that "an inexpedient administrative act may be lawful, whereas an unlawful act can never be justified as expedient, because illegality, in a state governed by the rule of law, can never be expedient" [7, p.12]. In other words, expediency operates exclusively within the framework of legality — the adminis-

tration may choose between several lawful solutions, but may not invoke expediency to justify an unlawful solution.

Expediency may be assessed according to several convergent criteria [9, p.55]:

a) The most appropriate moment for adopting the act, depending on the factual and normative context;

b) The place and concrete conditions for applying the act;

c) The material and legal means involved in the administrative measure;

d) Compliance with the purpose of the law, which constitutes the upper limit of administrative discretion.

It is precisely this last criterion that organically links expediency to the principle of legality, preventing discretion from turning into arbitrariness.

III. Fundamental Principles in the Phase of Adoption/Issuance of the Administrative Act. 3.1. The Principle of Reasoning of the Administrative Act. Reasoning represents "the administrative operation through which the factual and legal considerations justifying the issuance or adoption of an administrative act are set forth" [9, p.62]. It is not a mere formality, but rather the instrument through which the addressee of the act may verify compliance with legality and may decide, with full knowledge of the facts, whether or not to exercise the available remedies.

The content of the reasoning comprises two inseparable components. Factual reasoning involves the description of the factual situation that led to the issuance of the act — indicating the evidence and documents taken into consideration — while legal reasoning involves identifying the specific legal basis, namely the legal norm authorizing the issuance of the act and determining its content. The reasoning shall be communicated to the applicant, either in full or in summary form, upon request or ex officio, under the conditions established by law [10, p.146].

Professor Ovidiu Podaru emphasizes that reasoning cannot be purely formal or stereotypical; it must reflect a genuine analysis of the factual situation and of the applicable legal basis. Formal reasoning devoid of substance is equivalent to a lack of reasoning and entails the nullity of the act [14, p.43]. This requirement of substantive — not merely formal — reasoning constitutes one of the most significant advances of contemporary administrative law compared to classical conceptions.

The absence or insufficiency of reasoning produces serious legal consequences: the act may be annulled through administrative litigation, and the issuing authority may be obliged to issue a new act, lawfully reasoned. Professor Sergiu Cobăneanu specifies that, in light of the legislation of the Republic of Moldova, any administrative decision capable of affecting the rights or legitimate interests of a private person "must be adequately, clearly and consistently reasoned", while also indicating the available remedies [7, p.14].

3.2. The Principle of Proportionality. The principle of proportionality requires that the means employed by the administration in adopting an act be appropriate, necessary, and proportionate to the pursued objective, without imposing excessive burdens upon the addressees. It establishes a fair balance between the public interest — which the administrative act is intended to serve — and the private rights and interests of the affected persons [8, p. 94].

The structure of the principle is tripartite [12, p.120]:

1. Suitability: the adopted measure must objectively be capable of achieving the intended aim;

2. Necessity: among several equally effective measures, the administration must choose the least restrictive one for the affected person;

3. Proportionality stricto sensu: the benefits obtained through the administrative act must outweigh the sacrifices imposed, so that the intervention is justified in light of the general interest.

The application of the principle of proportionality is particularly relevant in matters concerning administrative acts of a sanctioning or restrictive nature: contraventional sanctions, access restrictions, suspensions of activity. In the case law of the European Court of Human Rights and the Court of Justice of the European Union, proportionality has acquired the status of a criterion for reviewing the legality of administrative acts, profoundly influencing Romanian administrative doctrine and practice. Moldovan doctrine, through the work of Professor Maria Orlov, has embraced this evolution, establishing proportionality as a condition for the validity of restrictive administrative acts [7, p.16].

3.3. The Principle of the Right to Defense and Prior Hearing. The principle audi alteram partem — the right to be heard before the adoption of an unfavorable administrative act — constitutes a fundamental requirement of good administration and a concrete expression of the rule of law in executive activity. It requires that the person targeted by an administrative act capable of affecting his or her rights or legitimate interests be informed in due time about the pending procedure and be given the opportunity to present facts, arguments, and evidence in his or her defense [9, p.70].

The obligation of prior information has a dual content [14, p.55], on the one hand, the administrative authority must inform the interested person about the existence of the procedure and his or her right to participate therein; on the other hand, it must communicate the facts, arguments, and evidence on which it intends to base its decision, so that the person may formulate a useful and effective defense.

Professor Antonie Iorgovan, analyzing the French tradition in this field, demonstrated that the right to defense in administrative proceedings constitutes a mitigated expression of the adversarial principle, and that its infringement may entail the relative nullity of the act — a sanction distinct from the absolute nullity applicable in cases of incompetence or defects of substantive legality [9, p.75]. Professor Lucia Catană further adds that, in practice, the guarantee of the right to defense is also ensured through the possibility for the person to be represented or assisted before the administrative authority, without the procedure becoming inaccessible to the interested party due to excessive complexity or costs [12, p.124].

3.4. The Principle of Transparency in the Adoption Procedure. The principle of transparency requires that the procedure for adopting administrative acts be open to interested persons and to the public, within the limits established by law. It manifests itself through the right of every person to information, which the public authority is obliged to provide within a reasonable time and by effective and appropriate means [8, p.98].

Transparency fulfills a dual function in the process of adopting the administrative act [10, p.152]: a preventive function — discouraging the adoption of arbitrary or unreasoned acts by exposing the decision-making process to public scrutiny; and a corrective function — providing affected persons with the necessary tools to identify potential defects in the act and challenge them through legal remedies. The unjustified refusal to disclose relevant information concerning the issuance of an administrative act may, in itself, constitute grounds for annulment of the act.

In the Republic of Moldova, transparency in public administration is constitutionally enshrined and regulated by special laws, and the principle obliges authorities to communicate to interested persons both administrative directives and the reasons and criteria underlying individual decisions, within a reasonable time and by appropriate means, so that they may be challenged if necessary.

3.5. The Principle of Equality and Non-Discrimination. The principle of equality requires administrative authorities to treat equally persons placed in objectively similar situations and not to apply discriminatory criteria — such as sex, race, ethnic origin, religion, political opinion, or other personal status — in the adoption of administrative acts. It does not prohibit every differentiation in treatment, but only those not justified by an objective difference in circumstances.

Professor Maria Albu highlights that the principle of equality has both a negative dimension — the prohibition of discrimination — and a positive dimension — the obligation of consistency in administrative practice: objectively identical situations must be treated in the same manner [3, p.48]. The inconsistency of administrative practice — whereby identical factual situations lead to different solutions depending on subjective factors — constitutes a form of institutional discrimination contrary to the rule of law and liable to review through administrative litigation.

The principle of equality cannot be invoked in order to extend an unlawful practice: if the administration has previously adopted unlawful acts in relation to other persons, this circumstance does not create a right for others to benefit from the same unlawful acts. Equality operates only within the sphere of legality, not outside it.

IV. Fundamental Principles in the Phase of Implementation of the Administrative Act. 4.1. The Principle of Binding Force and Enforceability of the Administrative Act. Once entered into force, the administrative act becomes binding and must be complied with both by the natural and legal persons to whom it is addressed and by the issuing authority itself. Its binding force derives from the fact that the act is issued on the basis and in execution of the law, enjoying the presumption of legality — a presumption iuris tantum, which may be rebutted through administrative litigation [14, p.67].

The corollary of binding force is immediate enforceability: the administrative act becomes enforceable from the moment it enters into force, without the need for an enforcement order or the completion of additional formalities, unlike judicial decisions. Professor Ovidiu Podaru emphasizes that this feature represents the clearest expression of the public authority regime under which the administration operates: "the intrinsic enforceability of the administrative act fundamentally distinguishes it from any private law act".

The presumption of legality produces important procedural effects: a person challenging an administrative act cannot, in principle, suspend its execution merely by filing a complaint. Suspension of the effects of the act requires either an express provision of law or a court decision issued upon the request of the interested person, under the conditions established by administrative litigation legislation [15. p.28].

4.2. The Principle of Communication and Publication of the Administrative Act. The production of the legal effects of the administrative act is conditioned upon bringing it to the attention of its addressees. Doctrine and legislation establish the rule that "the moment when legal effects are produced is that of communication of individual administrative acts and publication of normative acts", because only from that moment can subjects become aware of the content of the act and be required to comply with it [10, p.157].

Communication — specific to individual acts — is the operation through which the act is transmitted to the interested person or authority. It determines the moment from which the time limits for contestation begin to run and from which concrete rights and obligations arise for the addressee. Publication — specific to normative acts — is generally carried out through the Official Gazette or other means of public dissemination, without excluding situations where the law requires the publication of certain individual acts of

general interest as well (for example, decrees concerning citizenship) [9, p.80.

The consequence of failure to communicate or publish is that the act, although lawful and binding in abstracto, is not opposable to its addressees: they cannot be required to comply with an act they had no possibility of knowing. This rule constitutes an essential guarantee of legal certainty and of the principle of legality, preventing the administration from imputing to addressees conduct contrary to an act that was not communicated to them.

4.3. The Principle of Revocability and Stability of the Administrative Act. The principle of revocability of administrative acts — developed through doctrinal and jurisprudential generalization, without being explicitly codified in all legal systems — establishes the right and, in certain cases, the obligation of the issuing authority to withdraw the act for reasons of illegality or inexpediency. It expresses the idea that the administration is not definitively bound by its own acts and that the adaptation of executive activity to changes in fact or law is a requirement of good administration [8, p.101].

Revocation produces different legal effects depending on its cause [14, p.73]: revocation for illegality has, in principle, retroactive effect (ex tunc) — the act is deemed never to have produced valid legal effects; revocation for inexpediency produces effects only for the future (ex nunc) — the act produced valid effects until the date of its withdrawal. This distinction, formulated by professor E.D. Tarangul and later consecrated by doctrine as a whole, has essential practical consequences for the rights acquired by the addressees of administrative acts.

Revocability is subject to important limitations imposed by the principle of protection of legitimate expectations: acts creating subjective rights in favor of addressees may not be arbitrarily revoked, especially where the addressees have executed them in good faith or have modified their legal situation on the basis thereof [12, p.128]. This limitation of revocability is recognized both in Romanian doctrine and in the case law of the Court of Justice of the European Union and aims to protect individuals against arbitrary changes in the administration's positions.

4.4. The Principle of Judicial Review of the Legality of the Administrative Act. The principle of judicial review of the legality of administrative acts constitutes the institutional guarantee that all the other principles analyzed are respected in practice. It expresses the idea that no public authority may be the judge of its own legality and that the addressees of administrative acts must have access to external, independent, and effective review.

Judicial review of legality is exercised through two major complementary mechanisms. Internal administrative review — hierarchical and supervisory — allows superior authorities to verify, ex officio or upon complaint, the legality of the acts issued by subordinate authorities. This mechanism has the advantage of speed, but also the disadvantage that the reviewing body belongs to the same administrative structure as the reviewed authority [7, p.18].

External judicial review — exercised through administrative courts — offers the supreme guarantee of legality through the independence of the judge from the administration. The establishment of administrative litigation represented "an evident necessity of the time," because only judicial review ensures effective protection of citizens' rights and freedoms against unlawful administrative acts.

An indirect, yet highly effective mechanism, is the plea of illegality, which allows any person to invoke, within the framework of any dispute, the nullity of an administrative act opposed to him or her, without the court annulling the act, but merely disregarding it in

resolving the case. This instrument, analyzed by professor Tudor Drăganu, strengthens the principle of legality even outside the sphere of administrative litigation proper, extending judicial review over administrative activity to the entire field of legal disputes [9, p.85].

Conclusions. The analysis of the fundamental principles governing the adoption of administrative acts through the prism of the three phases of their existence — drafting, adoption/issuance, and implementation — leads to several synthetic conclusions of both theoretical and practical value.

First, principles do not operate in isolation, but rather form a coherent and hierarchical system of legal guarantees. Legality and competence are absolutely necessary conditions — any act issued in breach thereof is null; proportionality, reasoning, and the right to defense are conditions of validity whose consequences may vary depending on the gravity of the defect; expediency and efficiency are principles of good administration, reviewable through means other than legality litigation. Knowledge of this hierarchy is essential both for legal practitioners and for citizens confronted with administrative acts.

Second, principles have an irreducible threefold role: they guide the administration regarding what and how to draft the act (drafting phase); they impose procedural and substantive standards at the moment of adoption (issuance phase); and they guarantee that the resulting act produces predictable and reviewable legal effects with respect to its addressees (implementation phase). Treating principles as relevant only in one of these phases would constitute a serious methodological error.

Third, the doctrinal convergence between the Republic of Moldova and Romania in identifying and consecrating these principles demonstrates the existence of a common body of administrative values of European origin, transcending specific legislative differences. Both systems are committed to the trajectory of alignment with the standards of good administration promoted by the Council of Europe and by the case law of the European Court of Human Rights, and this alignment is achieved precisely through the strengthening of the legal regime of the principles examined.

Finally, from a lege ferenda perspective, the study confirms the conclusion reached by the most authoritative doctrine in both states: the adoption of clear, accessible, and comprehensive administrative procedure codes — which would uniformly transpose these principles into enforceable legal norms — remains one of the most urgent necessities for the modernization of public administration both in the Republic of Moldova and in Romania.

Bibliographical references

1. Ceterchi I., Craiovean I. Introduction to the General Theory of Law. Bucharest: ALL Publishing House, 1993.
2. Popa N. Lectures on Legal Sociology. Bucharest: University of Bucharest Publishing Hous, 1997, ISBN 973-575-159-3.
3. Albu M. Legal Regime and the Current Challenges of the Public. Alba Iulia: Annales Universitatis Apulensis Series Jurisprudentia, No.25/2022, ISSN 1454-4075, 2022, p.151.
4. Boboș G. General Theory of the State and Law. Argonaut Publishing House, 2008, ISBN 9731091033, p. 186.
5. Santai I. Administrative Law and Administrative Science. Bucharest: Alma Mater Publishing House, 2009, ISBN 973-632-562-8, pp.35-51.
6. Iovănaș I. Administrative Law and Elements of Administrative Science. Cluj-Napoca: "Babeș-Bolyai" University of Cluj, 1974.

7. Orlov M. Administrative Law. Chișinău: EPIGRAF Publishing House, 2001, ISBN 9975-903-35-5.
8. Vedinaș V. Administrative Law. Bucharest: 9th edition, Universul Juridic Publishing House, 2015, ISBN 9786066735803.
9. Iorgovan A. Treatise on Administrative Law. Bucharest: All Beck Publishing House, 2005, p. 699.
10. Cobăneanu S. Administrative Law. General Part. Chișinău: General Part, 2012, ISBN: 978-9975-53-169-6.
11. Drăganu T. Introduction to the Theory and Practice of the Rule of Law. Cluj-Napoca: Dacia Publishing House, 1992, ISBN: 973-35-0233-2.
12. Catană E.L. Drept administrative. București: Editura C.H. Beck, 2021, ISBN/ISSN: 978-606-18-1114-4.
13. Iovănaș I. Administrative Law. Vol. II, Arad: Servo-Sat Publishing House, 1997.
14. Podaru O. Administrative Law, Vol. I. The Administrative Act (I). Landmarks for a Different Theory. Bucharest: Hamangiu Publishing House, 2010, ISBN/ISSN: 978-606-522-275-5.
15. Orlov M., Climova A. The Concept of Administrative Litigation. In: Legea și Viața, Chișinău, No.6, 1999.

UDC 343.9:343.34 **DOI: https://doi.org/10.5281/zenodo.20808692**

ORGANIZED CRIME IN CONDITIONS OF MARTIAL LAW: CHALLENGES OF COUNTERACTION AND DIRECTIONS FOR SCHOLARLY ANALYSIS

Ganna SOBKO,
PhD, University Professor,
Department of Criminal Law and Criminology,
Odesa State University of Internal Affairs,
Ukraine
ORCID: 0000-0002-5938-3400

Abstract

The article is devoted to examining how organized crime in Ukraine has evolved under martial law, noting that wartime conditions have expanded and reshaped criminal activities. It highlights increased illicit activities such as arms trafficking, smuggling, and misuse of humanitarian aid, along with greater infiltration of criminal groups into strategic sectors like defense procurement and border control.

The study also emphasizes that weakened institutional coordination and strained law enforcement systems have allowed organized crime to strengthen its influence, deepen corruption, and expand the shadow economy. Overall, data from 2022-2025 indicates a growing and adapting criminal environment that is likely to persist after the war.

The article concludes that combating this threat requires stronger and more coordinated state policies, improved specialized law enforcement units, better control of key sectors, and alignment with international standards adapted to wartime conditions.

Keywords: organized crime, martial law, armed aggression, smuggling, weapons, corruption.

CRIMINALITATEA ORGANIZATĂ ÎN CONDIȚIILE LEGII MARȚIALE: PROVOCĂRI ALE COMBTERII ȘI DIRECȚII PENTRU NALIZA ȘTIINȚIFICĂ

Abstract

Articolul analizează modul în care crima organizată din Ucraina a evoluat sub legea marțială, evidențiind faptul că situația de război a extins și a remodelat activitățile infracționale. Sunt menționate activități ilegale în creștere, precum traficul de arme, contrabanda și utilizarea abuzivă a ajutorului umanitar, precum și o infiltrare tot mai mare a grupărilor criminale în sectoare strategice, cum ar fi achizițiile pentru apărare și controlul frontierelor.

Studiul subliniază, de asemenea, că slăbirea coordonării instituționale și presiunea asupra sistemelor de aplicare a legii au permis crimei organizate să își consolideze influența, să aprofundeze corupția și să extindă economia subterană. În ansamblu, datele din perioada 2022–2025 indică un mediu infracțional în creștere și în adaptare, care este probabil să continue și după încheierea războiului.

Articolul concluzionează că combaterea acestei amenințări necesită politici de stat mai puternice și mai bine coordonate, unități specializate de aplicare a legii îmbunătățite, un control mai strict al sectoarelor cheie și alinierea la standarde internaționale adaptate condițiilor de război.

Cuvinte-cheie: crimă organizată, lege marțială, agresiune armată, contrabandă, arme, corupție.

Introduction. The article is devoted to a comprehensive study of organized crime in Ukraine under martial law, which has significantly transformed both the nature and scale of criminal threats. It is emphasized that under conditions of armed aggression, organized crime acquires new forms, exploiting crisis phenomena, weakened institutional control, and the concentration of state resources on defense needs. Organized crime is defined as a complex socio-legal phenomenon characterized by criminal ties, hierarchical structure, a high level of coordination, and the active use of violence and corruption mechanisms.

Particular attention is paid to the transformation of criminal group activities following the introduction of martial law. It has been established that wartime conditions have contributed to the intensification of arms smuggling, illicit trafficking in excisable goods, and abuses in the sphere of humanitarian aid. The expansion of the shadow economy is outlined, driven both by objective difficulties in state control and by the deliberate exploitation of wartime conditions by criminal structures. It is emphasized that organized groups are increasingly infiltrating strategically important sectors, including defense procurement, the activities of military medical commissions, and customs and border control procedures.

It is proven that under martial law the destructive impact of organized crime is significantly amplified, manifesting in the legitimization of shadow practices, the spread of legal nihilism, and the deepening criminalization of social relations. Wartime realities create additional opportunities for the integration of criminal elements into legal economic and administrative processes.

An analysis of academic sources and law enforcement practice reveals a number of systemic problems that have intensified during martial law, including institutional imbalance within the law enforcement system, fragmentation of functions among newly established bodies, insufficient coordination, and limited adaptation of international standards to wartime conditions. It is emphasized that organized crime under these circumstances acts as one of the key instruments of corrupt influence on the economy and political processes.

Based on the analysis of statistical data and judicial practice for 2022-2025, a trend toward the growth of organized forms of crime, their rapid adaptation to wartime conditions and a high likelihood of further escalation in the post-war period has been identified.

It is concluded that effective counteraction to organized crime under martial law requires the modernization of state anti-crime policy, taking into account security challenges, in particular: the restoration and strengthening of specialized units, the creation of a unified database of members of criminal groups, enhanced control in strategically important sectors of the economy, and the adaptation of international standards to Ukrainian wartime realities.

Purpose and objectives of the study. Organized crime under martial law acquires qualitatively new characteristics, transforming under the influence of armed aggression and systemic changes in the socio-economic and security spheres of the state. As a complex socio-legal phenomenon, it is traditionally defined by the presence of stable criminal networks, hierarchical structures, a clear division of roles, as well as the use of violence, corruption mechanisms, and financial-economic instruments to achieve unlawful objectives. At the same time, during the period of martial law, organized crime goes beyond the classical understanding of a set of offenses and emerges as a systemic factor influencing the functioning of state institutions, the economy, and national security.

The introduction of martial law in Ukraine, in accordance with the Law of Ukraine "On the Legal Regime of Martial Law", as well as the full-scale armed aggression of the

Russian Federation, has led to significant transformations in the criminogenic situation. Under conditions of social destabilization, large-scale population displacement, destruction of infrastructure, and the overload of the law enforcement system, organized criminal groups actively adapt their activities to new realities. This is manifested in the diversification of criminal activities, particularly in the illegal trafficking of weapons and military goods, as well as in crimes related to humanitarian aid, including its misappropriation, resale, or fictitious distribution.

Particularly dangerous is the emergence of shadow markets for fuel, medicines, and food products, as well as the unlawful appropriation of property in temporarily occupied or de-occupied territories. In certain cases, such acts may fall under the qualification of war crimes in accordance with national criminal law. In this context, it is important to consider the provisions of international humanitarian law, including the Geneva Conventions of 1949 and Additional Protocol I of 1977, which prohibit unlawful interference with civilian property.

Moreover, organized criminal groups actively exploit fraudulent schemes aimed at illegally obtaining state payments, benefits, and compensations intended for military personnel and internally displaced persons. This indicates the penetration of criminal practices into the sphere of public administration and social policy. Such activities undermine financial stability and public trust in state institutions, contradicting the principles of effective governance reflected in the case law of the European Court of Human Rights, particularly regarding the obligation of the state to ensure effective investigation and protection of property rights under Article 1 of Protocol No.1 to the European Convention on Human Rights [8].

Materials applied. The scientific understanding of organized crime in Ukraine has traditionally been developed within the framework of criminology, criminal law, and related disciplines. A significant contribution to this field has been made by Ukrainian scholars such as O.M. Bandurka, Yu.P. Bytiak, O.Yu. Busol, O.V. Vynnyk, I.P. Holosnichenko, V.L. Hrokholskyi, Yu.V. Demianchuk, O.M. Dzhuzha, I.V. Zozulia, A.M. Kulish, M.I. Lohvynenko, M.I. Melnyk, O.M. Muzychuk, Ye.V. Nevmerzhytskyi, S.O. Shatrava, O.V. Shevchenko, and others. However, most of these studies were conducted under conditions of relative socio-economic stability, which limits their applicability to the realities of martial law.

In view of the above, there is an objective need to develop a new scientific paradigm for the study of organized crime that takes into account modern challenges related to armed conflict, the transformation of economic processes, and changes in the structure of criminogenic factors. In this regard, particular importance is attached to the integration of international experience, including the provisions of the Rome Statute of the International Criminal Court concerning war crimes, as well as the recommendations of the Council of Europe on combating organized crime.

The purpose of this study is to provide a systematic understanding of the current state of scientific research on the prevention and counteraction of organized crime under martial law, to identify gaps in existing theoretical and applied approaches, and to substantiate directions for their improvement. Particular attention is paid to assessing the effectiveness of the current model of combating organized criminal groups, analyzing the impact of martial law on their evolution, and developing scientifically grounded recommendations for preventive strategies in both short- and long-term perspectives.

Discussions and results obtained. Thus, the study of organized crime under martial law is not only a scientific issue but also a matter of practical importance, as its resolution directly affects national security, the rule of law, and the stability of the state in the con-

text of armed aggression and post-war recovery.

Under the legal regime of martial law, combating organized crime acquires the character of one of the key elements of ensuring national security. The transformation of the criminogenic environment caused by armed aggression is accompanied not only by changes in the forms of criminal activity but also by the exacerbation of systemic deficiencies in the institutional response mechanism. This necessitates a comprehensive rethinking of existing approaches to countering organized forms of crime, taking into account the provisions of the Criminal Code of Ukraine [9, Arts. 255, 255-1, 28, 191, 190, 263, 438], as well as international legal standards.

Among the key factors that negatively affect the effectiveness of countering organized crime under martial law, particular attention should be paid to the institutional imbalance of the law enforcement system. The liquidation of specialized units, in particular the Main Directorate for Combating Organized Crime (GUBOZ), combined with the absence of a fully functional alternative, has led to the loss of centralized coordination in combating organized criminal formations. Under martial law, this problem becomes critical, as the speed of response and the coordination of law enforcement agencies are decisive for neutralizing complex criminal networks.

Another significant factor is the fragmentation of functions among various bodies responsible for combating crime. In wartime conditions, when consolidation of resources is essential, the dispersion of powers, duplication of functions, and the lack of a unified analytical space significantly reduce the effectiveness of investigations. Such a situation contradicts the principle of effective investigation, repeatedly emphasized in the case law of the European Court of Human Rights, particularly in the context of the State's positive obligations to ensure an adequate response to criminal offenses and to protect property rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights [8].

A third factor is the implementation of international standards without proper adaptation to the conditions of martial law. While the protection of human rights is a fundamental principle of the rule of law, in situations of armed conflict there arises a need to balance rights guarantees with the effectiveness of criminal justice responses. In this regard, it is necessary to take into account the case law of the European Court of Human Rights concerning the permissibility of restricting certain rights in times of emergency [8, Art. 15], as well as the requirement of proportionality of such restrictions.

These institutional and legal imbalances create favorable conditions for the adaptation of organized crime to new realities. Organized criminal groups actively exploit vulnerabilities within the state system, expanding their activities into strategically important sectors. In particular, cases of illegal seizure of businesses (raiding), abuses in the field of land relations and privatization processes, as well as manipulation of public financial resources are becoming widespread. Such actions may be qualified cumulatively under Articles 191, 206-2, and 209 of the Criminal Code of Ukraine [9].

Of particular danger under martial law is the economic subversive activity of organized criminal formations. They actively penetrate the spheres of defense procurement, logistics, and humanitarian assistance. Numerous cases have been documented involving the misappropriation of humanitarian aid arriving from abroad, fictitious tender procedures, and the embezzlement of funds allocated for defense needs. In such cases, the actions of perpetrators may fall not only under property-related criminal offenses but also under war crimes as defined by Article 438 of the Criminal Code of Ukraine [9].

In this context, the provisions of international humanitarian law are of particular importance, including the Geneva Conventions of 1949 and Additional Protocol I of 1977,

which prohibit the unlawful appropriation of civilian property and humanitarian resources. Furthermore, under the Rome Statute of the International Criminal Court (Article 8), such acts may qualify as war crimes when committed in the context of an armed conflict.

Another significant area of criminal activity is the use of pseudo-charitable organizations as instruments for laundering proceeds of crime, which corresponds to the offense defined in Article 209 of the Criminal Code of Ukraine [9]. Such schemes undermine public trust in the volunteer movement, which is a critical component of the state's defense capacity.

Equally dangerous is the corruption-driven penetration of organized crime into public authorities. Under martial law, stable corruption networks are formed, enabling criminal groups to influence decision-making processes. In particular, cases have been identified involving the integration of criminal elements into the functioning of military medical commissions, facilitating unlawful evasion of mobilization. Such actions not only violate criminal law but also pose a direct threat to national defense capabilities and must be assessed in light of both national security principles and international standards.

Thus, under martial law, organized crime demonstrates a high level of adaptability, transforming into a complex, multi-layered phenomenon that combines elements of economic, corruption-related, and war-related criminality. This necessitates the development of a comprehensive model of counteraction that integrates national criminal law provisions, the case law of the European Court of Human Rights, and norms of international humanitarian law, taking into account the specific nature of contemporary security challenges.

Under the legal regime of martial law, the issue of corruption-driven penetration of organized crime into public institutions becomes particularly acute, significantly complicating effective counteraction to this phenomenon. One of the most dangerous manifestations is the influence of organized criminal groups on officials within border, tax, and customs authorities with the aim of facilitating illegal channels for the movement of persons, goods, and resources across the state border. Such actions may be qualified cumulatively under the provisions of the Criminal Code of Ukraine [9, Arts. 364, 368, 332, 255], and pose an increased threat in the context of armed conflict, when border control is objectively weakened.

Equally dangerous is the fusion of organized crime with local self-government bodies, which may act as instruments for legitimizing illegal activities through the issuance of unlawful permits for land use, construction, or access to state programs. Such a form of corruption symbiosis undermines the capacity of the state apparatus to effectively respond to internal challenges and reduces the legitimacy of public authority at the local level. This contradicts the principles of good governance articulated in the case law of the European Court of Human Rights, particularly with regard to the State's obligation to ensure effective protection of rights and lawful interests.

A separate dimension of the impact of organized crime under martial law is its destructive social effect. This phenomenon contributes to the spread of shadow practices within society and the formation of distorted perceptions of justice and legality, leading to an increase in legal nihilism. This is particularly evident among young people and individuals involved in hostilities, who, in the absence of visible justice in the rear, may lose trust in state institutions. As a result, a dangerous model of social mobility emerges, in which success is associated not with professional competence but with participation in criminal schemes.

In general, organized crime under martial law demonstrates a high level of adapt-

ability, effectively exploiting institutional gaps and limitations of state authority. This necessitates a fundamental revision of anti-criminal policy, including the restoration or establishment of specialized units for combating organized crime, strengthening control over sectors critical to national defense, and the creation of a unified national analytical database with cross-border verification mechanisms.

According to the SOCTA Ukraine report, prepared using the methodology of the European Union Agency for Law Enforcement Cooperation (Europol), significant risks of increased organized crime are associated with growing investments in strategic sectors, including the military-industrial complex, digital technologies, agriculture, and infrastructure reconstruction. Combined with the limited capacity of state control over certain border areas, this creates favorable conditions for the expansion of illegal trade, smuggling, and other forms of transnational crime.

Statistical data indicate a substantial increase in the activity of organized criminal groups during the period 2022-2025. In particular, the number of such groups subject to completed pre-trial investigations has more than doubled, while the number of individuals involved in organized criminal activity has also shown a steady upward trend. This confirms the increasing level of organization and social danger of such criminal formations.

Law enforcement practice (including the Security Service of Ukraine, the State Bureau of Investigation, the National Police, and the State Border Guard Service) demonstrates the intensification of organized crime in the military sphere. This includes illegal drug trafficking involving military personnel, the organization of channels for illegal border crossing, and the operation of transnational fraud networks. In a number of cases, such activities involve the use of modern technologies, including unmanned aerial vehicles and communication systems.

From the perspective of international law, certain manifestations of organized crime under martial law may acquire the characteristics of war crimes under the Rome Statute of the International Criminal Court (Article 8), as well as violate the provisions of the Geneva Conventions of 1949, which prohibit unlawful appropriation of property and exploitation of civilians.

A forward-looking analysis indicates that the continuation of the war may further contribute to the growth of organized crime due to factors such as economic instability, widespread corruption, declining public trust in state institutions, increased migration flows, and the potential reduction of international assistance. A particularly serious threat is the likely increase in criminal violence, including acts committed by individuals with combat experience and access to weapons.

In this context, it is essential to consider the jurisprudence of the European Court of Human Rights regarding the State's positive obligations to ensure effective investigations, prevent violence, and guarantee the safety of individuals. Failure to meet these obligations may result in violations of rights protected under the European Convention on Human Rights, including the right to life [8, Art. 2] and the prohibition of inhuman or degrading treatment [8, Art. 3].

Thus, organized crime under martial law emerges as a multidimensional phenomenon combining elements of economic, corruption-related, transnational, and war-related criminality. Its further evolution requires a comprehensive response based on the integration of national criminal law provisions, international humanitarian law, and the standards developed by the European Court of Human Rights, taking into account the specific nature of contemporary security challenges.

Transnational connections for illegal operations, particularly in the field of arms trafficking, are expected to intensify. In the medium-term perspective, Ukraine (in the event of the cessation of hostilities) may transform from a consumer country into a supplier and transit state for illicit weapons, including to European countries. It is likely that the primary clients and purchasers of such weapons will be transnational organized criminal groups. At the same time, the main objects of smuggling will predominantly remain small arms and ammunition.

Given the destructive consequences of hostilities, the reduction of employment opportunities, rising prices for essential goods, and the simultaneous decrease in the volume of state social support, an increase in human trafficking is projected, particularly for the purposes of labor and sexual exploitation, trafficking in children, and illegal migration. In this sphere, the activity of transnational organized criminal groups is expected to intensify.

Furthermore, an increase in crimes related to unlawful deprivation of liberty or kidnapping cannot be ruled out, particularly under the guise of providing psychiatric or psychological assistance to war-affected individuals, military personnel, and their family members, as well as under the pretext of facilitating the release of persons from captivity.

An intensification of criminal activity related to various forms of addiction is also anticipated, including illegal gambling and drug trafficking. The growth of stress-related conditions and economic hardship may lead to a more active involvement of young people in the illegal drug trade. A particular threat is posed by the expected increase in demand for narcotic substances among military personnel. It is projected that the production and circulation of synthetic drugs will increase, while the popularity of plant-based narcotics—whose raw materials are cultivated within Ukraine—will likely persist. Taking into account the steady expansion of online commerce, further growth of the Internet-based drug market can be expected.

At the same time, the global development of information and telecommunication technologies, along with the active use of computer systems, networks, and electronic communication tools, will contribute to a further increase in criminal offenses in the field of cybercrime. It is anticipated that the segment of so-called “cyber-dependent” crimes will expand, where computer technologies are used in the commission of traditional criminal offenses.

An analysis of crime trends in the context of wartime and the post-war period provides grounds for formulating a number of generalized conclusions:

In the short and medium-term, crime in Ukraine will acquire new organizational and qualitative characteristics, as a result of armed aggression, socio-economic transformations, and the influence of globalization processes.

The high saturation of society with weapons, particularly following demobilization, creates preconditions for an increase in both property-related and violent crimes, as well as for the transformation of Ukraine into a supplier and transit state for illicit weapons oriented toward the European market.

Socio-economic destabilization, rising unemployment, and the reduction of state social support increase the risks of human trafficking, including for labor and sexual exploitation, as well as illegal migration. The activation of transnational organized criminal groups in this area is highly probable.

An increase in the production and circulation of narcotic substances is expected, especially synthetic drugs, alongside a sustained demand for plant-based narcotics. The expansion of online trade will contribute to the growth of the Internet-based drug mar-

ket, while Ukraine's geographical position will reinforce its role in drug trafficking routes to Europe.

The spread of information and telecommunication technologies will contribute both to an increase in cybercrime and to the growth of "cyber-enabled" criminality, where traditional offenses are committed using digital tools.

The potential merger of organized criminal groups with illegal armed formations, the emergence of new forms of terrorist activity, and the intensification of money laundering processes are also anticipated. The share of recidivist crime is expected to grow, further increasing threats to public safety.

Increased societal tolerance toward certain manifestations of crime under martial law may lead to a statistical decrease in officially recorded offenses, which will not correspond to their actual prevalence.

In the future, the most dangerous types of criminal activity will remain crimes against national security, life and health, human trafficking, drug trafficking, corruption offenses, crimes related to excisable goods, cybercrime, and offenses involving illegal arms circulation.

Thus, these trends indicate a significant complication of the criminogenic situation in Ukraine and the risk of its deeper integration into transnational criminal networks. This necessitates strengthening state policy in the field of crime prevention and counteraction, adapting national legislation to international standards, developing international cooperation, and implementing innovative law enforcement approaches.

Conclusions. Organized crime in Ukraine, adapting to the conditions of a full-scale armed invasion, has undergone significant transformation, acquiring new, more complex and latent forms of manifestation, while substantially intensifying its destructive impact on key spheres of state functioning. Martial law has acted as a catalyst for adaptive processes within the criminal environment, leading not only to the modification of traditional criminal practices but also to the emergence of new criminal markets integrated into global and transnational networks.

As of the current period, the following key trends in the development of organized crime can be identified:

– Institutionalization of criminal groups, manifested in the growing number of organized formations characterized by clearly structured hierarchies, internal discipline, and functional division of roles, corresponding to the legal features of organized forms of complicity;

– Deep transformation of criminal practices, encompassing a shift from traditional forms of criminal activity (extortion, drug trafficking) to more complex and technologically driven manifestations, including cybercrime, illicit trafficking of humanitarian aid, organization of illegal migration channels, and crimes involving digital financial instruments;

– Systemic expansion of corrupt influence by organized criminal groups over public institutions, particularly within border, customs, tax, and military medical sectors, resulting in the formation of stable corruption networks and undermining the principles of good governance;

– Decline in the effectiveness of institutional coordination among law enforcement agencies, reflected in fragmentation of competences, duplication of functions, lack of a unified analytical framework, and insufficient inter-agency cooperation, which under martial law significantly complicates the counteraction to sophisticated forms of organized crime.

The cumulative effect of these factors creates complex threats to national security, destabilizes economic processes, increases the level of criminalization within society, and contributes to the erosion of public trust in state institutions and the rule of law.

The results of this study provide grounds for formulating a set of systemic proposals aimed at improving mechanisms for combating organized crime under wartime and post-war conditions.

First, legislative modernization of the criminal law framework is required, particularly with regard to liability for the establishment and participation in organized criminal groups. It is advisable to take into account new forms of criminal activity and to introduce effective mechanisms for addressing illicit enrichment, including the implementation of asset confiscation measures without the need to prove a direct link to a specific offense (the "unexplained wealth" model), in line with contemporary international anti-corruption standards.

An important direction is the creation of a unified interagency information and analytical system on organized criminal groups, operating under the coordination of the National Security and Defense Council of Ukraine. Within this system, it is necessary to establish specialized analytical intelligence units within the structures of the Ministry of Internal Affairs and the State Bureau of Investigation, capable of processing large volumes of data, including open-source intelligence (OSINT), crypto-assets, and darknet networks.

Equally important is the introduction of mechanisms for cross-border data exchange with partners from the European Union and NATO regarding individuals involved in organized criminal activity. This would enhance the effectiveness of combating transnational crime and prevent the movement of criminal actors and illicit assets across jurisdictions.

In addition, it is necessary to expand Ukraine's participation in regional and international initiatives aimed at combating organized crime, particularly within the framework of European Union programs, which would facilitate the integration of best practices and international standards into the national security system.

At the same time, a crucial component of counteraction is the strengthening of societal resilience to organized crime, which may be achieved through the implementation of national information campaigns aimed at raising public legal awareness, highlighting the social danger of organized criminal activity, and encouraging public cooperation with law enforcement agencies in detecting criminal offenses.

Thus, effective counteraction to organized crime under martial law requires a comprehensive and systemically integrated approach combining legislative reform, institutional strengthening of law enforcement bodies, enhanced international cooperation, and active engagement of civil society.

Bibliographical references

1. Fedorenko D.V. (2023). Zlochynnist za mezheiu zagalnopryiniatnogo (nova kriminologiia) (Crime beyond the conventional (new criminology)). Kyiv: Dakor [in Ukrainian].
2. Sait Ofisu Generalnogo prokurora: Pro rezultaty borotby z organizovanymy grupamy ta zlochynnymy organizatsiiamy (On the results of the fight against organized groups and criminal organizations. Website of the Office of the Prosecutor General of Ukraine). Available: https://gp.gov.ua/ua/posts/pro-rezultati-borotbi-z-organizovanimi-grupami-ta-zlochinnimi-organizaciyami-2 [in Ukrainian].
3. Dzhuzha O., Vasilevych V., Ivanov Yu., et al. (2006). Kriminologiia (Criminology). Kyiv: Pretsedent [in Ukrainian].

4. Bohatyriov I.H., Bohatyriov A.I. (2024). Organizovanna zlochynnist v umovakh voiennogo stanu v Ukraini: problem ta shliakhy podolannia (Organized crime under martial law in Ukraine: Problems and ways to overcome them). Zakon i kordon – Law & Border, (3), p.5-26 [in Ukrainian].
5. Danshyn I.M. (2002). Ustaleni formy zlochynnosti: kryminalogichnyi narys (Stable forms of crime: A criminological essay). Kharkiv: Akta [in Ukrainian].
6. Otsinka zagroz serioznoi ta/abo organizovanoi zlochynnosti (SOCTA Ukraine). Report on the results of the assessment of threats of serious and/or organized crime. Available: https://mvs.gov.ua/upload/1/8/5/3/8/2/socta.pdf [in Ukrainian].
7. Zakon Ukrainy «Pro vnesennia zmin do deyakikh zakonodavchikh aktiv Ukrainy shchodo reformuvannia organiv vnutrishnikh sprav» (The Law of Ukraine on making changes to some legislative acts of Ukraine regarding the reform of internal affairs bodies). Available: https://zakon.rada.gov.ua/laws/show/193-19#Text [in Ukrainian].
8. Council of Europe. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Protocol No.1 to the Convention. Available: https://www.echr.coe.int/documents/d/echr/convention_ENG.
9. Criminal Code of Ukraine. Law No.2341-III of 5 April 2001. Available: https://zakon.rada.gov.ua/laws/show/2341-14.

CZU 343.98:004 **DOI: https://doi.org/10.5281/zenodo.20809090**

STREAMLINING CRIME PREVENTION IN E-COMMERCE THROUGH THE DIGITAL INDIVIDUALIZATION OF NON-CUSTODIAL PREVENTIVE MEASURES

Florin CAZACU,
PhD Student, Assistant Professor,
Faculty of Law and Administrative Sciences,
"Stefan cel Mare" University of Suceava,
Romania
ORCID: 0009-0000-3852-991X

Abstract

The present paper addresses the complex issue of crime prevention in the digital space, with a specific focus on the continuously expanding e-commerce sector. The main objective of the research is to demonstrate that the efficiency of the modern criminal process depends on the judiciary's ability to adapt preventive measures to new technological realities. The author proposes an innovative paradigm for the individualization of non-custodial preventive measures, based on the use of risk assessment algorithms (the RED-P model). This approach allows for a "surgical" and dynamic supervision of the suspect, providing law enforcement agencies with real-time monitoring tools that can prevent recidivism without resorting to the extreme measure of preventive arrest.

The methodology used combines the doctrinal analysis of constitutional guarantees with the examination of technical Smart Policing solutions. The study conclusions highlight that the digitalization of judicial supervision is not merely an administrative necessity, but a guarantee of compliance with the principle of proportionality, ensuring a balance between consumer protection on e-commerce platforms and the presumption of innocence in the era of European digital justice.

Keywords: crime prevention, e-commerce, preventive measures, digital individualization, Smart Policing.

EFICIENTIZAREA PREVENIRII CRIMINALITĂȚII ÎN E-COMMERCE PRIN INDIVIDUALIZAREA DIGITALĂ A MĂSURILOR PREVENTIVE NEPRIVATIVE DE LIBERTATE

Abstract

Prezenta lucrare abordează problematica complexă a prevenirii criminalității în spațiul digital, cu un accent specific pe sectorul comerțului electronic, aflat într-o expansiune continuă. Obiectivul principal al cercetării este de a demonstra că eficiența procesului penal modern depinde de capacitatea sistemului judiciar de a adapta măsurile preventive la noile realități tehnologice. Autorul propune o paradigmă inovatoare de individualizare a măsurilor preventive neprivative de libertate, bazată pe utilizarea algoritmilor de evaluare a riscului (modelul RED-P). Această abordare permite o supraveghere „chirurgicală" și dinamică a bănuitului, oferind organelor de aplicare a legii instrumente de monitorizare în timp real care pot preveni recidiva fără a recurge la măsura extremă a arestului preventiv.

Metodologia utilizată îmbină analiza doctrinară a garanțiilor constituționale cu examinarea soluțiilor tehnice de Smart Policing. Concluziile studiului evidențiază faptul că digitalizarea supravegherii judiciare nu reprezintă doar o necesitate administrativă, ci o garanție a respectării principiului proporționalității, asigurând un echilibru între protecția consumatorilor pe platformele de e-commerce și prezumția de nevinovăție în era justiției digitale europene.

Cuvinte-cheie: prevenirea criminalității, e-commerce, măsuri preventive, individualizare digitală, Smart Policing (Poliție inteligentă).

Introduction. The accelerated expansion of electronic commerce (e-commerce) over the last decade has generated not only an unprecedented revolution in consumer markets and global economic interactions but also a profound, multidimensional, and alarming mutation of the criminal phenomenon. The virtual space, defined by structural characteristics such as near-total anonymity, extreme data volatility, and the absence of physical borders or rigid jurisdictional boundaries, has become fertile ground for the proliferation of new forms of crime or the sophisticated adaptation of classic ones. In this digital ecosystem, we are faced with a broad spectrum of illicit activities: from complex financial fraud, phishing schemes, and social engineering to operating on digital black markets (dark markets) of the Silk Road type and money laundering through crypto-assets.

In this emergent context, the traditional mechanisms of the criminal process, historically designed for a world of physical interactions and palpable material evidence, often prove to be anachronistic, rigid, and inefficient in the face of digital dynamism. The technical reality of investigating cybercrimes demonstrates that electronic evidence is, by its very nature, extremely fragile; it can be altered, deleted, or encrypted in fractions of a second remotely. The lack of real-time monitoring of a suspect's online activity represents not only a procedural gap but a major risk that often compromises the entire evidentiary process and the state's capacity to administer justice [1, p. 45].

The central problem addressed by the present research lies in the structural and operational inefficiency of "classic" non-custodial preventive measures. Currently, the institution of judicial control, although intended to be a viable alternative to detention, is based in most jurisdictions on an analog paradigm: the suspect's obligation to periodically report to a police unit to sign a report. This approach is practically null in the face of an experienced cybercriminal. An author of e-commerce fraud may formally and rigorously respect the obligation of physical presence before the supervisory body, but in the very second following their departure from the premises, they can access a digital terminal (smartphone, laptop) to recidivate, transfer illicit assets into anonymous digital wallets, or destroy essential evidence through remote wipe commands—all before law enforcement can even detect the anomaly.

The evolution of modern forensics emphasizes that digital traces require a specific protection and surveillance regime because, unlike biological or mechanical traces, digital ones can be dissipated into a global information cloud without leaving undeniable physical clues [1, p. 52]. From this perspective, the judiciary faces a major constitutional, ethical, and administrative dilemma. On one hand, the measure of preventive arrest appears to many magistrates as a quick and secure solution for isolating the suspect and protecting the evidence. However, according to international standards and domestic legislation, arrest must remain a measure of *ultima ratio*, applicable exclusively when no other less restrictive method can remove the state of social danger or the risk to the criminal investigation. In this regard, the Criminal Procedure Code of the Republic of Moldova establishes particularly rigorous criteria for the deprivation of liberty, imposing on the magistrate the task of exhaustively motivating why milder measures are insufficient in the specific case [2, p. 94].

Furthermore, the constant and evolving jurisprudence of the Strasbourg Court emphasizes that the mere persistence of a reasonable suspicion is not sufficient to justify prolonged detention. In landmark cases, such as *Buzadji v. the Republic of Moldova*, the European Court of Human Rights has imperatively stated that state authorities have the obligation to explore, with absolute priority, alternative measures that guarantee the suspect's presence at trial and the prevention of recidivism without sacrificing the fun-

damental right to liberty and security [3]. Ignoring modern technological surveillance possibilities in favour of deprivation of liberty risks transforming preventive arrest from an exceptional measure into an anticipated punishment—a situation incompatible with the presumption of innocence.

On the other hand, maintaining the suspect at liberty without monitoring tools adapted to the digital era is not a solution, but a vulnerability. This undermines public confidence in the act of justice and leaves the community of users and consumers on e-commerce platforms exposed to often irreparable material and moral damages. The need for security in the digital civil circuit cannot be ignored in the name of an outdated legal formalism.

The necessity for a radical paradigm shift thus becomes not just a theoretical option, but a social urgency. The present paper argues that the sustainable solution does not consist in overstretching the penitentiary system by increasing the number of arrests, but in what we call the "digitalization of judicial supervision". This approach is supported by modern doctrine, which emphasizes the importance of continuously adapting the institution of preventive measures to respond to new forms of social danger without affecting the substance of individual rights [4, p. 112]. The author proposes an innovative paradigm for the digital individualization of preventive measures, grounded in the use of risk assessment algorithms through the RED-P model (Risk Evaluation and Preventive Decision).

The RED-P model goes beyond the limitations of simple geographical monitoring via GPS. It proposes a "surgical" supervision of the suspect's interaction with the digital space, allowing for the imposition of virtual barriers such as digital geofencing (logical perimeter) adapted to the specific nature of the crime committed. For example, instead of prohibiting the suspect from leaving the locality, we can prohibit their access to certain communication protocols, trading platforms, or specific IP addresses, automatically monitoring any attempt to violate these restrictions.

By integrating the concept of Smart Policing into the criminal procedural framework, judicial supervision ceases to be a passive and bureaucratic administrative task, transforming into a proactive, predictive, and efficient instrument for crime prevention. The fundamental objective of this work is to demonstrate that, by responsibly leveraging technology, we can ensure a real balance between the protection of public order and the unwavering guarantee of human rights.

We thus offer the magistrate a "third way": a technologically supervised liberty, which is, paradoxically, much safer for society than classic judicial control and infinitely more humane than preventive arrest.

Methods and materials applied. The methodological approach of the present research is eminently multidisciplinary, strategically positioned at the intersection of criminal procedural law, modern forensics, and state-of-the-art information technologies. Given the hybrid nature of e-commerce crimes, which combine elements of classic fraud with advanced IT mechanisms, it was necessary to adopt a flexible research framework. Thus, to ensure an exhaustive, multidimensional, and rigorous analysis of the complex issues regarding crime prevention in the e-commerce sector, a synergistic combination of traditional and exploratory methods was employed, aimed at capturing the volatility and complexity of the criminal phenomenon in the virtual space.

The primary method used in the legal substantiation of the paper is the comparative method. Through this, the evolution of criminal procedural legislation in the Republic of Moldova and Romania was analyzed dynamically, with a particular emphasis on recent legislative efforts to integrate electronic monitoring mechanisms into the judicial

supervision process. A central point and a pillar of reference for this analysis was Law No.146/2021 from Romania. This legal norm provides an advanced and coherent normative framework for technical supervision within judicial and penal execution procedures, representing a regional benchmark for best practices [5]. The analysis of this law was essential for establishing the minimum technical and legal standards necessary for the use of electronic surveillance devices, serving as a logical foundation for the proposals to digitalize judicial control presented in the following chapters.

In parallel, the doctrinal and exegetical analysis method was widely used, through the in-depth study of specialized treatises and relevant jurisprudence. Particular attention was paid to the concept of Smart Policing, investigating how the use of Big Data and predictive analysis can revolutionize the activity of law enforcement agencies. The research is supported by recent studies analyzing the affirmation of new incrimination norms and the imperative of adapting sanctions to the fluid forms of modern criminality [6, p. 21]. Complementarily, the research integrates the doctrinal vision on the evolution of criminal law in the digital era, analyzing how classic principles intersect with the new realities of technological surveillance [7, p. 34].

The innovative and original pillar of the methodology is represented by the conceptual and algorithmic modeling of the RED-P (Risk Evaluation and Preventive Decision) system. This method involved a systemic design process, structured on three levels of analysis:

1. *Systemic Risk Analysis*: This involved identifying, cataloging, and extracting critical variables from the suspect's digital behavior within the e-commerce environment. Indicators such as the "digital footprint" (IP addresses, metadata), the frequency of transactions considered suspicious by their typology, and the deliberate use of traffic anonymization tools (VPN, proxy, TOR) were considered.

2. *Algorithmic Modeling*: This stage involved transforming the previously extracted variables into quantifiable and processable risk indicators. The objective is to create a model that allows for real-time monitoring of the degree of social danger, providing instantaneous alerts the moment the suspect's digital behavior deviates toward activities with criminal potential.

3. *Decision Simulation*: Through this method, the way in which risk indicators can be integrated into the decision-making process of the magistrate (the judge of rights and liberties) was evaluated. The goal is to support the selection of the most appropriate preventive measure, ensuring a "surgical" individualization of the obligations imposed on the suspect, so that the restriction is minimal for the individual but maximal for preventing recidivism.

The research materials used are diverse and of high scientific quality. In addition to legal texts and doctrine, they include European technical standards regarding data security (GDPR) and ethical principles regarding the use of artificial intelligence in justice. These elements are essential to ensure that the RED-P model is not only an operationally efficient tool for the Ministry of Internal Affairs (MIA), but also a mechanism that guarantees fundamental rights, being in full accordance with the requirements of the rule of law, legal certainty, and human dignity. The integration of these diverse materials allows for a comprehensive vision of the future of criminal justice in the digital age.

Discussions and results obtained. The present research reveals the indisputable fact that the success of crime prevention in the e-commerce sector fundamentally depends on the judiciary's ability to evolve from physical monitoring—which is often inefficient, passive, and purely symbolic—to an intelligent, proactive, and dynamic digital

surveillance. The results obtained from the analysis demonstrate that the use of advanced technology in criminal proceedings should not be viewed as a mere administrative or logistical facility, but as a sine qua non condition for the genuine observance of the principle of proportionality and the efficiency of the act of justice in the 21st century.

Through the rigorous application of the RED-P model, the path is opened toward "predictive justice", capable of identifying, classifying, and neutralizing the risk of recidivism or the destruction of digital evidence before it materializes into irreparable financial damage for consumers or the irremediable compromise of the criminal process. In this regard, modern legal doctrine firmly emphasizes that the adaptation of surveillance norms and preventive measures must reflect the transborder, dematerialized, and instantaneous character of cybercrime, moving beyond the limitations of traditional geographical borders [8, p. 45].

1. Architecture and Operation of the RED-P Model in the E-commerce Ecosystem. The core of the innovation proposed in this research is represented by the RED-P (Risk Evaluation and Preventive Decision) system. It is not a mere tracking tool, but a complex decision-support algorithm designed to transform heterogeneous digital variables into binary or graded risk indicators, easily interpreted and applied by magistrates during the criminal investigation or trial phases. In offenses specific to electronic commerce, a suspect's dangerousness can no longer be exclusively correlated with their physical presence within a certain terrestrial perimeter; instead, it must be evaluated in relation to the method, intensity, and frequency of their interaction with digital infrastructure and global data networks.

The RED-P model processes real-time data streams regarding high-risk digital behaviors, such as: the systematic use of anonymization techniques (commercial VPNs, TOR nodes, or residential proxies), the frequency of transactions on unregulated financial platforms or crypto-asset exchangers, and documented attempts to access "dark markets". This analytical approach allows for a "surgical" individualization of the obligations imposed on the suspect. Instead of general and often useless prohibitions (such as the ban on leaving the locality), the judge of rights and liberties can impose specific virtual barriers and access restrictions to certain communication protocols. Such a method overcomes the recognized limitations of analog judicial control, where the total absence of monitoring of the suspect's online activity leaves a free and uncontrolled field for recidivism and the manipulation of electronic evidence **[9]**.

2. Digital Geofencing and Streamlining Operational Missions of the MIA. A major and original result of the present research is the definition and rigorous substantiation of the concept of *digital geofencing*. Unlike traditional GPS monitoring, which tracks geographical coordinates and a person's physical movement, digital geofencing creates logical perimeters and access barriers within the virtual space (IP addresses, web domains, specific applications). From the perspective of law enforcement agencies (Police and Gendarmerie), this model radically transforms operating procedures, exponentially optimizing the use of human and logistical resources, which are, in most cases, limited.

Smart Policing systems integrated with the RED-P algorithm allow for a shift from reactive to proactive surveillance by generating automated alerts transmitted in real-time to dispatch centers only at the critical moment when the suspect attempts to breach the digital barrier established by a court order. This operational efficiency is supported and validated by new regional legislative trends, such as Law No.146/2021 from Romania, which encourages the use of electronic devices and integrated IT systems to ensure compliance with preventive measures. This reduces the constant pressure on field surveil-

lance personnel and minimizes the margin for human error [10]. Consequently, the intervention of law enforcement forces within the Ministry of Internal Affairs (MIA) becomes targeted, justified, and based on indisputable technical data, which can subsequently be used as solid and irrefutable evidence in the event of a proposal to replace judicial control with the harsher measure of preventive arrest.

3. Constitutional Compatibility and Administrative Impact on the Judiciary. The legal analysis of the obtained results confirms that the digitalization of surveillance through the RED-P model is not only timely but also fully compliant with the requirements of the rule of law and the protection of fundamental human rights. Applying the proportionality test (suitability, necessity, and proportionality *stricto sensu*), it is clearly observed that limiting access to certain segments of the digital space or monitoring data traffic represents an interference considerably less harmful to the private and social life of the individual than the total deprivation of liberty through incarceration.

The jurisprudence of the European Court of Human Rights has consistently stated that any restrictive measure of rights must be strictly necessary in a democratic society and proportional to the legitimate aim pursued (prevention of crimes and protection of public order). The ECHR has encouraged Member States to explore and adopt modern technological alternatives that minimize the intrusive impact on the suspect's private life while simultaneously providing security guarantees for society [11].

Therefore, the RED-P model not only enhances collective safety in the e-commerce sector but also becomes a genuine guarantor of individual liberty. It ensures supervision that respects the dignity of the person, the right to work (as many professions require internet access), and the presumption of innocence, fitting perfectly within national and European constitutional standards regarding preventive measures [12]. The implementation of this system would lead, in the long term, to a relief of the penitentiary system and an increase in the celerity of criminal trials in the field of cybercrime.

In conclusion, based on the synthesis of the research findings, it can be stated with a high degree of certainty that streamlining crime prevention in the vast field of electronic commerce does not represent a mere technocratic option or a technical facility, but has transformed into an imperative necessity for guaranteeing the security of the global economic circuit and public order in the context of 21st Century challenges. The study has demonstrated unequivocally that traditional and analog methods of judicial supervision are, for the most part, anachronic in the face of criminal phenomena defined by instantaneity, extreme volatility of evidence, and an almost total dematerialization of illicit activity.

The digitalization of the criminal process—not only at the level of document archiving but through the adoption of intelligent real-time monitoring and intervention mechanisms—represents the only viable and sustainable way to reduce the alarming technological gap between the rapid evolution of organized cybercrime and the limited reaction capacity of state bodies [13]. The transition to a modern paradigm of digital individualization allows for the administration of a much more precise justice, which moves beyond a purely repressive function and succeeds in actively preventing the materialization of criminal risk, thereby providing a superior degree of protection for both victims and the judicial system as a whole.

1. Resilience of the Judicial System through the Implementation of the RED-P Model. We conclude that the implementation of the RED-P (Risk Evaluation and Preventive Decision) model provides the necessary resilience and agility for criminal investigation bodies and courts in effectively managing cybercriminal risk, which is inherently un-

predictable. This model radically transforms the nature of preventive measures, evolving from a passive, static, and purely administrative obligation (such as signing a register at the police station) into a proactive, dynamic, and adaptable control instrument.

The research has highlighted that a "*surgical*" supervision of the suspect's interaction with the digital space and payment infrastructures is infinitely more effective in preventing recidivism specific to the e-commerce field than simple supervision of physical presence at the police station or the restriction of geographical movement. Through the use of advanced risk assessment algorithms, the magistrate (the judge of rights and liberties) no longer decides based on subjective intuitions, but has at their disposal an objective and quantifiable database to decide on the targeted restriction of certain liberties. This mechanism ensures a real, verifiable, and proportional balance between the acute need for societal protection and the unwavering respect for the suspect's presumption of innocence, thereby avoiding abuses or unnecessary custodial measures.

2. Legislative Recommendations and Implementation Perspectives in the Context of Smart Policing. For this paradigm to achieve lasting success, the implementation of the RED-P model provides the necessary resilience for criminal investigation bodies. This mechanism ensures a genuine balance between the protection of society and the observance of the presumption of innocence, a principle guaranteed by the Constitution of the Republic of Moldova [14] and the Constitution of Romania [15]. For the success of this paradigm, it is urgent to update the legislative framework to allow for the imposition of specific "digital obligations". The integration of RED-P into Smart Policing protocols will lead to a decrease in administrative costs and an increase in citizen safety, representing the decisive step toward a modern justice system adapted to the information age [16].

In this regard, we recommend the full integration of the RED-P model into the operational working protocols of specialized units within the Police and Gendarmerie (organized crime and cybercrime units), thereby facilitating uninterrupted, precise, and automated monitoring. This techno-legal evolution will lead, in the medium and long term, not only to a considerable reduction in the enormous administrative and logistical costs associated with preventive arrest (expenses for guarding, food, transport, and the logistics of detention centers), but also to a significant increase in the level of safety perceived by citizens when using digital platforms.

The recovery of damages and the prevention of secondary victimization in the online environment thus become achievable objectives. In conclusion, the digitalization of judicial supervision is not merely a technical modernization; it represents the decisive step toward a modern, profoundly humane justice system, as it avoids incarceration when it is not absolutely necessary, and is perfectly adapted to the complex challenges of the information age in which we live.

Bibliographical references

1. STAN N. PĂȘESCU G., ION C. Treatise on Forensics (Tratat de criminalistică). Bucharest: Timpul Publishing House, 2004. 282 p. ISBN 973-8142-23-4.
2. Criminal Procedure Code of the Republic of Moldova No.122-XV of 14.03.2003. In: Official Gazette of the Republic of Moldova, 07.06.2003, No.104-110, Art. 447.
3. Judgment of the European Court of Human Rights in the Case of Buzadji v. the Republic of Moldova of 05.07.2016 (Application No.23755/07). Available: https://hudoc.echr.coe.int (accessed 21.04.2026).
4. ANASTASIU L. Preventive Measures in Criminal Proceedings (Măsurile preventive în procesul penal). Bucharest: C.H. Beck Publishing House, 2018. 352 p. ISBN 978-606-18-0752-9.

5. Law No.146/2021 on Electronic Monitoring in Judicial and Penal Execution Proceedings (Romania). In: Official Gazette of Romania, Part I, No.515 of May 18, 2021.
6. BOŞCĂNEAN M. Criminal Liability for Water Pollution (Răspunderea penală pentru poluarea apelor). Author's abstract of the doctoral thesis in law. Chisinau: "Stefan cel Mare" Academy of the Ministry of Internal Affairs, 2018. 30 p.
7. BOŞCĂNEANU M. Evolution and affirmation of the legal norms for the criminalization of water pollution at the national level. In: Law and Life (Legea şi Viaţa), 2017, No.11 (311), p. 32-37. ISSN 2587-4365.
8. GURBOU M. Cybercrime prevention in the context of globalization. In: Journal of Crime Investigation (Revista de Investigare a Criminalităţii), 2019, No.2, p. 45-58. ISSN 2065-9288.
9. DOLEMAN R. Smart Policing: The Role of Digital Surveillance in Modern Criminal Investigations. New York: TechLaw Press, 2022. 210 p.
10. NEAGU I., DAMASCHIN M. Treatise on Criminal Procedure. General Part (Tratat de procedură penală. Partea generală). 3rd Edition. Bucharest: Universul Juridic Publishing House, 2020. 840 p. ISBN 978-606-39-0648-0.
11. Judgment of the European Court of Human Rights in the Case of Amuur v. France of 25.06.1996 (Application No.19776/92). Available: https://hudoc.echr.coe.int (accessed 21.04.2026).
12. VOLONCIU N. Treatise on Criminal Procedure. General Part (Tratat de procedură penală. Partea generală). Bucharest: Paideia Publishing House, 2012. 650 p.
13. European Commission. Report on the impact of e-commerce on consumer protection and criminal prevention. Brussels: EC Publication Office, 2023. 120 p.
14. Constitution of the Republic of Moldova of 29.07.1994. In: Official Gazette of the Republic of Moldova, 12.08.1994, No.1.
15. Constitution of Romania. Republished. In: Official Gazette of Romania, No.767 of October 31, 2003.
16. BOŞCĂNEANU M. The offense of water pollution in the context of technological challenges. In: Achievements, Programs, Perspectives. Theses of the UTM International Jubilee Conference. Chisinau: Technical University of Moldova, 2017, p. 45-48.

CZU 343.352:351 **DOI: https://doi.org/10.5281/zenodo.20809226**

THE CULTURE OF INTEGRITY: PREVENTION MECHANISMS IN PUBLIC ADMINISTRATION

Mihaela-Miruna TUDORAȘCU,
PhD, Associate Professor,
Department of Legal and Administrative Sciences,
"1 Decembrie 1918" University of Alba Iulia,
Romania
ORCID: 0000-0003-4641-4578

Abstract
This paper explores the ethical foundation of public institutions' functioning, starting from the premise that a solid culture of integrity is the most effective tool for preventing corruption. Instead of focusing exclusively on criminal sanctions and coercive measures, the research investigates the essential preventive mechanisms that can transform public administration into a pillar of the rule of law. The article provides a detailed analysis of fundamental instruments such as codes of conduct, corruption risk management, decision-making transparency facilitated by digitalization processes, and the legal protection of whistleblowers. The methodology used combines normative analysis with the evaluation of international best practices, offering a holistic perspective on how ethical values can be integrated into daily administrative routines. The research results highlight that prevention is not a single event, but a systemic and continuous process of education and monitoring. The conclusions emphasize that the success of these mechanisms directly depends on political will and the professionalization of the public officials' corps, vital elements for increasing institutional resilience against criminal phenomena, while proposing practical solutions for combating crime through integrity.
Keywords: public administration, integrity, corruption prevention, ethical mechanisms, transparency.

CULTURA INTEGRITĂȚII: MECANISME DE PREVENȚIE ÎN ADMINISTRAȚIA PUBLICĂ

Abstract
Această lucrare explorează fundamentul etic al funcționării instituțiilor publice, pornind de la premisa că o cultură solidă a integrității reprezintă cel mai eficient instrument pentru prevenirea corupției. În loc să se concentreze exclusiv asupra sancțiunilor penale și a măsurilor coercitive, cercetarea investighează mecanismele preventive esențiale care pot transforma administrația publică într-un pilon al statului de drept. Articolul oferă o analiză detaliată a unor instrumente fundamentale precum codurile de conduită, gestionarea riscurilor de corupție, transparența procesului decizional facilitată de procesele de digitalizare și protecția juridică a avertizorilor de integritate. Metodologia utilizată combină analiza normativă cu evaluarea celor mai bune practici internaționale, oferind o perspectivă holistică asupra modului în care valorile etice pot fi integrate în rutina administrativă zilnică. Rezultatele cercetării evidențiază faptul că prevenirea nu reprezintă un act singular, ci un proces sistemic și continuu de educație și monitorizare. Concluziile subliniază că succesul acestor mecanisme depinde în mod direct de voința politică și de profesionalizarea corpului funcționarilor publici, elemente vitale pentru creșterea rezilienței instituționale împotriva fenomenelor infracționale, propunând totodată soluții practice pentru combaterea criminalității prin integritate.
Cuvinte-cheie: administrație publică, integritate, prevenirea corupției, mecanisme etice, transparență.

Introduction. The most visible face of the fight against corruption is often the criminal trial. Yet the most decisive arena is quieter, like recruitment committees, procurement desks, routine authorizations, and internal controls. In these ordinary settings, corruption is rarely an isolated moral failure. It is typically enabled by a context, as un-

clear rules, tolerated conflicts of interest, weak supervision, and institutional habits that normalize *small* deviations. Where such enabling conditions exist, punitive action arrives late, after damage has already occurred.

This paper starts from a practical premise, a robust culture of integrity is the most costeffective preventive tool available to public institutions. *Integrity culture* is not a slogan. It is the aggregate of shared expectations, leadership signals, formal standards, and daytoday practices that shape behavior under pressure. In public administration, integrity culture is especially relevant because the state acts through individuals endowed with authority. That authority is exercised in settings characterized by information asymmetry (the official knows more than the citizen), discretion (a decision often allows room for judgment), and imbalance of power (the citizen depends on the official's decision). These features are normal in administration, but they also create opportunities for abuse [1].

The argument developed here is deliberately preventive. It asks which mechanisms (short of criminal sanction), reduce risk and strengthen institutional resilience. The focus is placed on four instruments that are recurrent in international guidance and increasingly present in national reforms, like: (1) codes of conduct and ethics management; (2) corruption risk management; (3) transparency supported by digitalization; (4) legal protection of whistleblowers. Each mechanism is assessed not only as a formal requirement, but also as a component of an integrity ecosystem that depends on implementation quality [4].

The structure of the paper proceeds from conceptual foundations, as integrity as a governance concept and as a dimension of the rule of law, toward detailed examination of each preventive mechanism, followed by a synthetic discussion of cross-cutting success factors and practical recommendations for institutional reform.

Conceptual and Normative Foundations of Integrity in Public Administration. Integrity as a Governance Capability. In administrative practice, *integrity* is often reduced to the absence of corruption. That negative definition is insufficient. Integrity is better understood as an institutional capacity to align decisions with public purpose, under legal constraints, and in a manner that can be justified to citizens. This broader concept encompasses impartiality, legality, fairness, accountability, and responsible stewardship of public resources, each of these dimensions contributing to what scholars increasingly describe as a governance capability rather than merely a personal virtue [2; 3].

As a governance capability, integrity operates at three analytically distinct but practically interrelated levels. An individual one (ethics awareness, conflict of interest recognition, personal accountability), organizational (procedures, controls, incentive structures, and supervisory systems), and systemic (independent oversight, transparency architecture, and civic scrutiny mechanisms). A genuine culture of integrity emerges when these levels reinforce each other, when individual officials are supported by robust institutional frameworks, which are in turn embedded in credible external accountability structures. The system collapses when formal rules exist but leadership tolerates breaches, when protections exist on paper but are undermined in practice, or when external oversight is captured or ineffective [2; 3; 5].

It is important, moreover, to distinguish between compliance-based integrity (conformity with rules as a minimum threshold) and values-based integrity (active internalization of public service ethics as an identity commitment). Both approaches are necessary, because rules define the minimum acceptable standard and create enforceable obligations and values motivate conduct in the gray zones that rules inevitably leave uncovered. The most resilient integrity cultures combine clear rules with genuine professional ethos,

a combination that effective public personnel management seeks to cultivate and sustain over time.

Integrity and the preventive logic of anti-corruption. International anti-corruption frameworks increasingly emphasize prevention. The United Nations Convention against Corruption (UNCAC), the principal global instrument in this domain, calls upon States Parties to establish preventive measures in public bodies, including standards of conduct for correct, honorable, and proper fulfillment of public functions, transparent procurement systems, and mechanisms facilitating reporting and detection of corruption [1]. UNCAC's preventive chapter is not merely aspirational, it sets legally binding obligations for States Parties and functions as a normative benchmark against which national reform performance is assessed through the Implementation Review Mechanism.

Prevention is not an alternative to enforcement but its necessary foundation; it reduces the structural opportunities for corrupt behavior and increases the likelihood of early detection, before harm escalates into a criminal matter. In practice, enforcement concentrates resources on the most serious, visible, and politically salient cases, a selection that inevitably leaves significant corruption unaddressed. Prevention, by contrast, addresses the entire population of administrative interactions and therefore operates at scale.

In public administration, prevention is also ethically preferable because it protects citizens from harm before it occurs and preserves public trust, a resource that, once depleted, is slow and costly to rebuild. From a governance perspective, prevention functions as systematic risk reduction, mapping vulnerabilities, are reducing discretionary opacity, strengthening controls, and building organizational reporting capacity. The investment in prevention is thus justified both on effectiveness grounds and on the normative ground that citizens are entitled to administration that is honest by design, not merely constrained by prosecution [2; 4].

Integrity as a dimension of the rule of law. Citizens experience the rule of law not primarily in courtrooms, but also in administrative encounters, like licensing, social benefits, inspections, public procurement, and service delivery. When these decisions are perceived as tradable for favors, or as subject to arbitrary preferences, the rule of law becomes effectively negotiable at the street level, formal legality is observed in the courtroom while informal bargaining governs administrative interaction. This corrosion of institutional legitimacy has long-term consequences for citizens' willingness to comply with law and for their trust in state institutions more broadly [1; 4].

From this angle, integrity culture becomes a form of rule-of-law maintenance; it keeps administrative power connected to public purpose and legal limits, and sustains the credibility of institutions that exercise authority over citizens. International benchmarks on the rule of law, including the World Justice Project Rule of Law Index and the EU Justice Scoreboard, explicitly include measures of administrative integrity among their indicators, reflecting the scholarly consensus that procedural legality at the administrative level is constitutive of the rule of law, not merely a derivative concern [2; 3].

Codes of conduct and Ethics Management. A common failure mode in integrity reform is the adoption of a code of conduct to satisfy a legal or project requirement, followed by minimal investment in implementation. A code that is published, signed once at onboarding, and thereafter ignored has minimal preventive value, and may even create a false sense of compliance, allowing institutions to present formal integrity credentials while underlying vulnerabilities remain unaddressed. The preventive function of codes of conduct depends critically on their integration into the full institutional life cycle, for recruitment, onboarding, continuous training, performance evaluation, supervision, dis-

ciplinary proceedings, and organizational communication.

The OECD integrity framework stresses the importance of cultivating a culture of integrity supported by leadership signals, commonly described as *tone at the top*, and consistent, fair accountability. When leaders treat ethics as operationally relevant and enforce standards without discrimination, staff interpret the code as genuinely constraining, when leaders treat it as symbolic or apply it selectively, staff rationally interpret it as bureaucratic theater. The behavioral consequence is significant, because perceived inconsistency between formal rules and actual enforcement norms is among the most powerful predictors of staff willingness to engage in misconduct when opportunity arises [2; 3].

Effective codes of conduct typically include clear foundational principles (legality, impartiality, service orientation, professional discretion) and concrete behavioral rules on recurring risk areas, as conflicts of interest disclosure and management, acceptance of gifts and hospitality, outside employment and activities, use of public resources and information, and post-employment restrictions. They should also provide explicit guidance on seeking ethics advice, reporting suspected misconduct, and the links between code provisions and disciplinary frameworks.

Critically, usability matters at least as much as comprehensiveness, overly long codes become unreadable documents that staff avoid engaging with, while practical examples, decision trees, and scenario guidance make codes actionable in real administrative contexts. Codes that reflect the actual functions performed by staff, like procurement officers, benefit administrators, inspectors, licensing staff, financial controllers, that are more likely to provide decision support in the dilemma situations where guidance is most needed [3].

Codes of conduct are only one component of a broader ethics management system. Institutions benefit substantially from designated integrity advisers or ethics contact points that can provide confidential guidance on emerging dilemmas before they escalate into misconduct. The availability of professional, confidential advice reduces the risk that officials, motivated to act correctly, make uninformed decisions in ambiguous situations and incur inadvertent breaches. This advisory function is distinct from the disciplinary function and must be organizationally credible and genuinely confidential to be used.

Practical, scenario-based training, tailored to specific functions such as procurement, inspections, human resources management, or digital services, supports consistent decision-making and reduces vulnerability to external pressure. Training effectiveness is enhanced by interactive design, real case studies drawn from the sector, and periodic refreshment rather than one-off certification. Institutions that invest in scenario-based ethics training report improved capacity among staff to recognize risk situations, articulate the applicable standard, and resist informal pressure [2; 3].

Disciplinary enforcement is where the integrity culture is often won or lost. If sanctions appear selective, applied stringently against lower-ranked staff while senior officials who violate the same standards are treated leniently, staffs perceive ethics as a tool of power rather than a neutral standard. Selective enforcement may be more corrosive to integrity culture than the original misconduct, because it signals that formal rules are subordinated to informal hierarchies and political relationships. Conversely, consistent enforcement, demonstrable due process, and clear communication of standards strengthen behavioral norms and reduce the prevalence of *gray zone* practices that, while individually minor, collectively erode institutional integrity [4].

Corruption Risk Management. Corruption can be approached analytically as a probability that a structural vulnerability will be exploited under certain conditions of

opportunity, motivation, and rationalization. Risk management brings systematic structure to prevention by identifying where discretion, financial resources, and weak controls intersect, and then selecting proportionate mitigations calibrated to the level and nature of the risk. This analytical approach shifts prevention from rhetorical declarations of commitment toward concrete managerial practice embedded in organizational routines.

Recurring high-risk areas in public administration may include: public procurement and contracting (where large budgets, technical complexity, and multiple discretionary decisions converge); permits, licenses, and inspections (where officials hold gate-keeping authority over private economic interests); human resources decisions (selection, promotion, assignment to sensitive posts); asset and property management; and allocation of social benefits, subsidies, or grants. These functions are not *corrupt by nature*, they are structurally exposed because they combine discretionary decision-making power, economic incentives for influence, and information asymmetry between the official and those subject to the decision [1; 4].

The institutional consequences of corruption in these high-risk functions extend well beyond the individual transaction. In procurement, corruption distorts market competition, inflates public expenditure, and may result in substandard goods or services, with direct consequences for public service quality and safety. In inspections, corruption enables continued non-compliance with safety, environmental, or building standards, creating risks for the broader public. Understanding the nature of harm in each functional area is important for calibrating both the urgency and the design of preventive measures.

Credible corruption risk assessment combines several complementary inputs, like process mapping to identify decision points, analysis of discretion points where rules leave room for judgment, review of data indicators such as complaint records, audit findings, court cases, and unexplained procurement outcomes, and structured consultations with frontline staff, who often possess tacit knowledge of risk patterns that formal analysis misses. The output of assessment must be a concrete action plan specifying mitigation, like segregation of duties, rotation of officials in sensitive posts, expanded disclosure obligations, digital audit logs, collusion-resistant tender design, and targeted supervisory attention [2; 4].

Risk management fails institutionally when it degenerates into a formal annual report, completed to satisfy an external requirement, reviewed by a committee, and filed without generating management action. Effective systems treat risk assessment as a living management tool, updated when processes change, reviewed when incidents occur, and linked to planning cycles that allocate resources for mitigation. Periodic review of whether selected mitigations have actually reduced risk, not merely produced documentation, is essential to maintaining the credibility and effectiveness of the system.

Internal controls, like financial controls, procedural requirements, approval hierarchies, documentation standards, perform an integrity function that is often insufficiently appreciated. They protect both institutions and individual honest officials by clarifying procedures and creating defensible decision trails. An official who has followed documented procedures in a contested procurement decision is in a fundamentally different position, legally, disciplinarily, and reputationally, from one who exercised the same discretion without documentation. This protective function gives officials a material interest in maintaining robust controls, beyond compliance motivation. Internal audit functions contribute by independently evaluating control effectiveness and verifying whether selected mitigations actually reduce risk rather than merely producing administrative paperwork. Audit reports that identify systemic control weaknesses, rather than only in-

dividual irregularities, provide the most valuable management information for integrity purposes. Where internal audit recommendations are systematically addressed, the risk management cycle operates as designed, where they are ignored, the audit function becomes a detection rather than a prevention mechanism [4].

Transparency and Digitalization. Transparency is simultaneously a democratic principle, when citizens are entitled to know how power is exercised in their name and an anti-corruption tool of demonstrated effectiveness. Misconduct thrives in opacity when procedures are unclear, criteria are unstated, and outcomes are unpublished, the detection of irregular decisions is difficult and comparison across cases is impossible. Open procedures, published criteria, and publicly accessible outcomes increase detectability, enable civil society and media scrutiny, and raise the reputational and legal cost of irregular decisions. These effects are strongest where discretion is unavoidable, precisely the risk contexts where structural transparency has the most to contribute [1; 4].

Transparency also operates through deterrence, when officials who know that their decisions will be subject to scrutiny, whether by a superior, a peer, a journalist, or a citizen adjust their behavior accordingly. The mechanism is akin to the observation effect documented in experimental ethics research, as the visibility increases compliance with norms. Institutional transparency creates a sustained form of ambient observation that reinforces integrity without requiring continuous active oversight.

Digitalization on the other hand offers substantial integrity-relevant benefits, it can standardize procedures (reducing room for informal negotiation), create immutable audit trails, automate compliance checks, and enable proactive publication of data without requiring active requests. Well-designed digital systems reduce the number of informal contact points between officials and citizens, diminish the role of discretion in routine decisions, and facilitate real-time oversight of administrative operations. These potential gains have motivated significant investment in e-government and digital service delivery as elements of anti-corruption strategy. However, digitalization can also reproduce or even amplify integrity vulnerabilities if system design concentrates discretion, hides decision criteria within opaque algorithms, or creates new governance gaps for instance, around data quality, access rights management, or accountability for automated decisions. Integrity-by-design requires clear legal rules embedded in platforms, immutable and independently accessible logs, transparent algorithm governance, and accountable system stewardship arrangements. The transition to digital administration thus requires integrity analysis of new systems before deployment, not only post-hoc audit [4].

Public procurement is structurally the highest-risk domain in public administration. It involves large budgets, technical complexity that creates information asymmetry between buyers and suppliers, multiple sequential discretionary decisions, and powerful economic interests in influencing outcomes. Preventive transparency measures in procurement include publication of tender documentation and evaluation criteria, disclosure of contract modification decisions (which are a common channel for ex-post price inflation), performance reporting, and conflict of interest disclosures for members of evaluation committees [6; 7].

Integrity Pacts, like contractual arrangements in which procuring authorities and tenderers commit publicly to transparent, corruption-free procedures, monitored by an independent civil society observer, represent a more intensive form of procurement transparency that has demonstrated measurable results in reducing irregular practices in a range of national and international contexts. The evidence base from Transparency International's implementation experience indicates that structured transparency with

independent monitoring produces better procurement outcomes, not only in integrity terms but in value-for-money terms, as competition improves when participants have credible assurance that the process is fair [6; 7].

Integrity culture in administrative service delivery is reinforced when institutions publish clear, accessible, and complete service standards: required documents, processing timelines, applicable fees, legal basis for decisions, appeal routes, and complaint channels. Publication of this information reduces information asymmetry, a root condition for corruption on the demand side, and increases the ability of citizens to contest arbitrary decisions or delay tactics. When citizens know what the procedure requires, they are more resistant to demands for informal facilitation payments and better positioned to invoke their procedural rights [2; 4].

Digital portals that enable real-time tracking of application status and automated notification of decision stages further reduce the informal contact between citizens and officials that provides opportunities for pressure or solicitation. Combining service standard publication with citizen feedback mechanisms, structured complaint channels, satisfaction surveys, and published response statistics, creates a continuous accountability loop that complements formal oversight [4].

Whistleblower Protection. Many irregularities in public administration are first identified often long before external audit or inspection, by insiders, meaning colleagues, subordinates, or officials adjacent to the function where misconduct occurs. Reporting channels therefore function as early warning mechanisms that can stop harm from escalating and can simultaneously reveal systemic vulnerabilities in institutional design that would otherwise remain undetected. The preventive value of insider reporting is thus both immediate (stopping a specific irregularity) and structural (generating management information about control weaknesses) [8].

Without credible protection, however, officials who become aware of misconduct face a rational incentive to remain silent. The risks of retaliation, formal disciplinary action, informal marginalization, career damage, or social exclusion within the workplace are immediate, concrete, and personal, while the benefits of reporting accrue to the organization and the public. This asymmetric risk-benefit calculation explains why, in the absence of effective protection, silence is the modal response to awareness of misconduct. The provision of credible, enforceable whistleblower protection changes this calculus and is therefore a structural component of any serious integrity architecture.

Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law establishes common minimum standards across EU Member States on reporting channel requirements, confidentiality obligations, protection against retaliation, feedback obligations, and structured handling procedures [5]. The Directive requires entities above a size threshold to establish internal reporting channels and mandates that Member States designate competent external authorities for external reporting. This architecture internal channels for first instance, external channels as a fallback, reflects the recognition that internal reporting is most efficient and most responsive when organizational culture permits it, but that external channels are essential where internal structures are themselves implicated in the misconduct.

Effective reporting systems provide multiple channels (written, verbal, digital), secure and confidential case handling procedures, timely acknowledgment and feedback to reporters, and clear communication of the legal protections available [9]. Channel design matters for use rates, like systems that are difficult to access, technically unreliable, or procedurally opaque are used less, even when the legal protection they provide is for-

mally adequate. Institutions that invest in channel usability and active communication of protection frameworks report higher reporting rates, a function not only of improved channels but of the trust that investment in these systems signals.

A legitimate concern in whistleblower protection systems is the risk of malicious or vexatious reporting, as deliberately false disclosures made to damage colleagues or institutional rivals. Well-designed systems manage this risk without undermining protection for genuine reports. The key design principle is a good-faith standard, we consider the protection attaches to reports made on a reasonable belief that the information disclosed indicates a breach, regardless of whether the belief proves correct after investigation. Reporters who provide deliberately false information with knowledge of its falsity may be subject to proportionate consequences [5].

This distinction between good-faith error and deliberate bad faith is fundamental. The protection systems that require reporters to prove the truth of their allegation as a condition of protection effectively deter legitimate reporting by making reporters bear the risk of investigation uncertainty. The balance between protecting good-faith reporters and discouraging malicious reports is best achieved through procedural fairness, adequate verification capacity, clear internal communication about protections and responsibilities, and transparent handling statistics that allow external assessment of how the system operates.

Whistleblowing should not be treated merely as a disciplinary trigger or a mechanism for identifying individual misconduct. Mature integrity systems treat reports, along with audit findings, inspection results, and complaint data, as organizational learning inputs, like patterns of reporting reveal weak controls, ambiguous rule applications, inadequate training, or toxic management practices that individual disciplinary proceedings cannot address. The feedback loop from reporting to systemic improvement, as corrective action in identified instances, control revision where gaps are identified, and communication of improvements to staff, transforms a reactive reporting mechanism into a proactive organizational resilience function.

What Makes Prevention Work? **Political Will as an Operational Variable**. Integrity mechanisms are not politically neutral instruments, they limit patronage networks, constrain discretionary allocation of benefits, and create accountability for decisions that previously operated informally. It is therefore structurally predictable that effective anti-corruption reform will encounter political resistance, not only from officials engaged in misconduct, but from political principals who benefit from the patronage networks that informal administrative discretion sustains. Political will, in this context, must be understood as an operational variable observable in concrete institutional choices, not merely in declaratory commitment.

Political will becomes visible in measurable indicators, like stable funding for integrity functions and oversight institutions, merit-based appointments to positions with integrity responsibilities, consistent enforcement of standards across the political hierarchy, active support for independent oversight (audit, inspection, and anti-corruption bodies), even when findings are politically inconvenient; and effective follow-up on recommendations from integrity assessments and external review processes. Without these operational indicators, integrity reforms risk becoming decorative, formal mechanisms whose existence satisfies external requirements while substantive implementation is deferred or undermined [4].

Professionalization of the Civil Service reduces corruption risk through several complementary mechanisms. It increases the competence of officials to handle complex

regulatory and financial functions correctly, it provides stability of tenure that reduces the pressure of short-term political loyalty calculations and it builds a professional identity that functions as an internalized motivational constraint against misconduct. Undertrained staffs in complex functions remain structurally vulnerable to manipulation, whether through ignorance of applicable rules or through dependence on informal guidance from superiors who may have interests in particular outcomes.

Professional standards in recruitment, structured career development, fair compensation calibrated to functions performed and merit-based promotion collectively increase both the ability of officials to resist external pressure and their motivation to do so. The investment in professionalization is therefore not merely a human resource management matter, it is a structural integrity measure with direct preventive consequences for crime in public administration.

Institutional resilience-aligning incentives and controls. Prevention is strongest when incentives and control systems are coherently aligned. If institutional performance is measured exclusively by output speed or budget expenditure, integrity considerations become secondary, officials who cut procedural corners to meet targets will be rewarded rather than sanctioned. Integrating integrity measures into performance management, through risk-based control requirements, documentation quality standards, complaint response rates, and regular training completion, creates conditions where compliance with integrity standards is itself a performance expectation, not a constraint on performance.

Institutional resilience (the capacity to maintain integrity under external pressure, resource constraints, and leadership transitions) is ultimately a function of system depth. An institution dependent on a single exemplary leader for its integrity standards is fragile. One with robust codes, trained staff, functioning controls, active oversight, and credible reporting channels retains integrity capacity through leadership changes and external shocks. Building this depth is the long-term objective of integrity culture development.

Conclusions. Corruption prevention in public administration cannot be reduced to criminal sanctions, even though enforcement remains indispensable as a component of a comprehensive response. Preventive mechanisms operate earlier in the causal chain, they shape incentives, reduce structural opportunities, and increase detectability before harm escalates into criminal proceedings. This paper has argued that integrity culture is effective precisely because it makes ethics operational, it creates conditions in which honest behavior is the path of least resistance and misconduct is costly, visible, and likely to be detected.

Each of the four preventive mechanisms examined (codes of conduct and ethics management, corruption risk management, transparency supported by digitalization, and whistleblower protection) contributes a distinct layer to coherent integrity architecture. Codes of conduct matter when supported by training, advisory capacity, and consistent enforcement. Risk management matters when embedded in management cycles and generates concrete mitigations rather than formal documentation. Transparency and digitalization matter when they reduce opacity and create genuine traceability rather than formal publication without substantive access. Whistleblower protection matters when reporting is safe, trusted, and connected to organizational learning rather than limited to individual disciplinary outcomes.

Across all of these mechanisms, sustained political will and progressive professionalization of the civil service are the decisive success factors. These cross-cutting determinants explain why formally similar institutional frameworks yield substantially different

integrity outcomes across national contexts. The quality of implementation is a function of the political and organizational conditions within which mechanisms operate, not merely of the design of the mechanisms themselves. Building these conditions through institutional reform, meritocratic governance, and sustained investment in public service capacity is the long-term work of which integrity culture development is a part.

Integrity is often treated in political discourse as a moral aspiration, a quality that honest individuals possess and corrupt ones lack. In public administration, it is more precisely understood as a pragmatic strategy of crime prevention: it protects citizens from harm, strengthens the rule of law at the administrative level where citizens experience it most directly, and builds the institutional resilience that is the most durable form of protection against the criminal phenomena that exploit administrative power.

Bibliographical references

1. United Nations Office on Drugs and Crime. United Nations Convention against Corruption. New York, 2004. PDF: UN Convention against Corruption (PDF) [unodc.org].
2. OECD. Recommendation of the Council on Public Integrity (OECD/LEGAL/0435). Adopted 26 January 2017. Text: OECD Legal Instrument – Public Integrity [legalinstr...s.oecd.org].
3. OECD Public Integrity Handbook. OECD Publishing. Available: https://www.oecd.org/en/publications/oecd-public-integrity-handbook_ac8ed8e8-en.html.
4. World Bank. Enhancing Government Effectiveness and Transparency: The Fight against Corruption. Washington, D.C.: World Bank Group, 2020. Available: https://documents1.worldbank.org/curated/en/235541600116631094/pdf/Enhancing-Government-Effectiveness-and-Transparency-The-Fight-Against-Corruption.pdf.
5. European Union. Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Official Journal of the European Union, L 305, 26.11.2019, pp. 17–56. Available: https://eur-lex.europa.eu/eli/dir/2019/1937/oj/eng.
6. Transparency International. Integrity Pacts (tool overview). Available: https://www.transparency.org/en/tool-integrity-pacts.
7. Transparency International. Integrity Pacts: A How-To Guide from Practitioners. Berlin: Transparency International, 2016. Available: https://images.transparencycdn.org/images/2016_IntegrityPacts_HowToGuide_EN.pdf.
8. COLVIN Naomi, DREYFUS Suelette. National Transposition of the EU Whistleblower Protection Directive: How is Europe Progressing on Protecting Whistleblowers? https://www.blueprintforfreespeech.net/en/library/reports.
9. BĂLAN Emil, TUDORAȘCU Mihaela-Miruna. The Whistleblower. Evolution and Perspectives. The Academic Journal of Law and Governance (AJLG), No.10/2022.

CZU 343.98 **DOI: https://doi.org/10.5281/zenodo.20809368**

THE INTERFERENCE BETWEEN PERSONAL DATA PROTECTION AND THE REQUIREMENTS OF FORENSIC INVESTIGATION IN IDENTITY THEFT CASES INVOLVING ORGANISED CRIMINAL GROUPS

Ion BOTNARI,
PhD Student,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-4262-9777

Evghenia GUGULAN,
PhD, Associate Professor,
Head of Private Law Department,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-5960-1164

Abstract

In the architecture of contemporary digital society, identity theft committed by organized criminal groups takes on the characteristics of sophisticated criminality, placed at the intersection of legal regimes with apparently divergent purposes: personal data protection and the efficiency of forensic investigation.

The present scientific endeavor seeks to explore this area of normative convergence, highlighting the complexity arising from the need to balance fundamental guarantees of private life with the specific demands of criminal investigation and the administration of evidence in criminal proceedings. The analysis is grounded in an integrative approach that coherently combines doctrinal, normative, and jurisprudential benchmarks at both national and European levels, with a view to delineating an applicable legal framework capable of responding to these dynamics.

Particular attention is devoted to the mechanisms of storage, processing, and preservation of personal data within criminalistic activities, as well as to the evidentiary vulnerabilities generated both by the inherently digital nature of such data and by the organized structure of criminal conduct. From a critical perspective, the research underscores the risk of excessive oscillation between the imperatives of data protection and the demands of effective criminal enforcement, while emphasizing the need to articulate a balanced normative and operational model capable of ensuring coherence and proportionality in legal intervention.

Finally, conceptual benchmarks and directions of reflection are advanced, intended to contribute to the configuration of coherent legal and forensic mechanisms capable of simultaneously meeting the requirements of the rule of law and the emerging challenges of organized cybercrime.

Keywords: identity theft, organized criminal groups, forensic investigation, personal data protection, electronic traces, digital evidence.

INTERFERENȚA DINTRE PROTECȚIA DATELOR CU CARACTER PERSONAL ȘI EXIGENȚELE INVESTIGAȚIEI CRIMINALISTICE ÎN CAUZELE DE FURT DE IDENTITATE COMIS DE GRUPURI CRIMINALE ORGANIZATE

Abstract

În arhitectura societății digitale contemporane, furtul de identitate comis de grupuri criminale orga-

nizate dobândește valențele unei infracționalități sofisticate, plasate la intersecția unor regimuri juridice cu finalități aparent divergente: protecția datelor cu caracter personal și eficiența investigației criminalistice.

Prezentul demers științific vizează explorarea acestei zone de convergență normativă, evidențiind complexitatea generată de necesitatea echilibrării garanțiilor fundamentale ale vieții private cu exigențele specifice investigației criminalistice și ale administrării probelor în procesul penal. Analiza se fundamentează pe o abordare integrativă, care îmbină în mod coerent repere doctrinare, normative și jurisprudențiale, atât la nivel național, cât și european, în vederea conturării unui cadru juridic aplicabil, capabil să răspundă acestor dinamici.

O atenție particulară este acordată mecanismelor de stocare, prelucrare și conservare a datelor cu caracter personal în cadrul activității criminalistice, precum și vulnerabilităților de ordin probatoriu generate atât de natura intrinsec digitală a acestor date, cât și de caracterul organizat al activității infracționale. Dintr-o perspectivă critică, cercetarea evidențiază riscul unei oscilații excesive între imperativele protecției datelor și exigențele eficientizării represiunii penale, subliniind, totodată, necesitatea configurării unui model de echilibru normativ și operațional, apt să asigure coerența și proporționalitatea intervenției juridice.

În acest sens, sunt avansate repere conceptuale și direcții de reflecție menite să contribuie la configurarea unor mecanisme juridice și criminalistice coerente, capabile să răspundă simultan exigențelor statului de drept și provocărilor emergente ale criminalității informatice organizate.

Cuvinte-cheie: furt de identitate, grupuri criminale organizate, investigație criminalistică, protecția datelor cu caracter personal, urme electronice, probe digitale.

Introduction. The accelerated digitalization of society, manifested within the sphere of social relations, has necessitated the establishment of an adapted normative framework, materialized through regulations designed to address specific legal and societal exigencies [18, p.35-36]. The alignment of national legislation with the European acquis communautaire [7] led to the adoption of Law No.133 of 8 July 2011 on the Protection of Personal Data [10]. Subsequently, the adaptation of the regulatory framework to the provisions of a European Union regulation General Data Protection Regulation [9] resulted in the replacement of the aforementioned law with a new legislative act — Law No.195 of 25 July 2024 on the Protection of Personal Data [11]. The provisions of Article 84 of the Regulation implicitly suggest the necessity of legally classifying identity theft as a criminal offence.

This necessity also derives implicitly from the provisions of Article 9(5) of Directive 2013/40/EU [8]. In the same vein, recital (14) of the Directive's preamble states, *inter alia*, that "*the implementation of effective measures aimed at combating identity theft [...] constitutes a [...] relevant component of an integrated strategy against cybercrime*" [8].

In light of Government Decision No.1171 of 28 November 2018 approving the Regulation on the Harmonization of National Legislation with the acquis of the European Union Government Decision No.1171 of 28 November 2018 [15], the establishment of criminal-law mechanisms aimed at protecting social values and legal relations against identity theft became imperative. In this regard, through Law No.136 of 6 June 2024 amending certain normative acts Law No.136 of 6 June 2024 [14], the Criminal Code of the Republic of Moldova was supplemented with Article 260^7, thereby introducing the criminalization and sanctioning of this offence.

The adjustment of national legal provisions has produced significant effects upon the nature and dynamics of the criminal mechanisms employed by organized criminal groups (OCGs). Whereas, within the classical model of organized crime, personal identity represented an attribute difficult to falsify, intrinsically linked to physical documents and state registries, it has presently evolved into a complex set of data stored and processed within electronic environments, susceptible to unauthorized access, duplication, and exploitation through sophisticated technological means [1, p. 14].

Technological progress has generated not only new modalities of communication

and information storage, but also new systemic vulnerabilities, systematically and professionally exploited by organized criminal structures. This structural transformation has led to the emergence of a distinct category of criminal conduct — digital identity theft — criminalized under Article 260[7] of the Criminal Code of the Republic of Moldova [5].

One of the most sensitive issues debated in recent years, both at the national and international levels, concerns the protection of personal data [21, p. 77]. In this context, the forensic investigation of identity theft committed within or through organized criminal groups (OCGs) encounters a methodological challenge of particular complexity: criminal investigation bodies are compelled to access, process, and evidentially exploit precisely the category of data that the legal regime governing personal data protection, established by Law No.133/2011 [10], subjects to stringent restrictions [20, p. 103].

This interference does not constitute a mere issue of legal application, but rather reflects a structural tension between two equally legitimate constitutional values: the right to private life, guaranteed by Article 28 of the Constitution of the Republic of Moldova Constitution of the Republic of Moldova and by Article 8 of the European Convention on Human Rights [3], and the right of society to security and to the effective repression of organized criminality. Neither of these values may be sacrificed in favour of the other without undermining the very foundations of the rule of law.

The forensic particularity of identity theft committed within organized criminal groups (OCGs) resides in its instrumental character: *the stolen identity does not represent the ultimate purpose of the criminal activity, but rather serves as a mechanism for concealing group members, gaining access to the financial resources of victims, and disguising illicit financial flows.* This instrumentalization of identity confers upon the offence a distinct evidentiary dimension: the forensic investigator must reconstruct not only the mechanism of identity theft itself, but also the entire chain through which the stolen identity is utilized within the criminal scheme of the OCG.

The analysis conducted by the authors of 1,142 judicial decisions delivered in cases involving an OCG component in the Republic of Moldova during the period 2015-2025 demonstrated that false or stolen identities most frequently appeared in the roles of courier (853 references) and intermediary (175 references) — functions which, by their very nature, create an operational distance between the leader of the OCG and the concrete criminal act, while simultaneously reducing the possibilities of identifying the group's actual command structure.

Moldovan forensic doctrine has not, to date, systematically examined the interference between these two normative regimes within the specific context of organized criminal groups (OCGs) and digital identity theft. The contributions of Gheorghiță M. in the field of forensic methodology [1], as well as the works of Ostavciuc D. and Odagiu Iu. concerning the investigation of organized criminality [2] – provide the general methodological framework, yet they do not address the particularities arising from the collision between the evidentiary demands of digital investigations and the legal regime governing personal data protection.

Studies in the field of special investigative activities — including the work of D. Roman concerning the grounds and conditions for special investigative measures (SIMs) [16] — approach the issue of interference with private life primarily from a procedural perspective, without correlating it with the forensic specificities of digital traces in cases involving OCGs. The present study seeks to fill this doctrinal gap by identifying and conceptualizing this interference as an autonomous methodological problem and by formulating reference points for an operational balancing model adapted to the Moldovan legal context.

The existing normative framework provides investigative instruments, yet it does not establish an integrated methodological architecture. The provisions of Articles 132[1]-132[8] of the Criminal Procedure Code of the Republic of Moldova [6] regulate access to various categories of electronic data, though without expressly distinguishing between the categories of data relevant in cases of digital identity theft — namely, the victim's identity data, the traffic data of OCG members, the content of communications, and the metadata associated with financial transactions.

This absence of methodological differentiation leads, in practice, to the application of uniform standards to situations characterized by radically different degrees of intrusiveness, thereby generating either the excessive use of intrusive measures in circumstances where less restrictive means would suffice, or the abandonment of efficient investigative techniques out of concern for exceeding the legal threshold. Both methodological errors directly affect the quality of criminal prosecution and contribute to the high rates of legal reclassification documented within the analyzed case law.

Methods and materials applied. The research employs an integrative methodology, combining doctrinal analysis, comparative normative analysis, jurisprudential analysis, and the empirical-statistical method. The selection of these methods was determined by the interdisciplinary nature of the subject under examination, situated at the intersection of forensic science, criminal procedural law, and the normative framework governing personal data protection, thereby requiring a synthetic approach capable of integrating distinct analytical perspectives within a coherent framework.

From a doctrinal perspective, the research examined the contributions of Gheorghiță M. in the field of forensic methodology [1], the works of Ostavciuc D. and Odagiu Iu. concerning the investigation of organized criminality [2], the studies of D. Roman regarding the conditions for conducting special investigative measures (SIMs) [16], as well as national and international scholarly works addressing cybercrime, digital evidence, and the legal regulatory framework applicable to personal data protection. In addition, guidance documents issued by Europol and reports of the United Nations Office on Drugs and Crime concerning global trends in organized crime within the digital environment were also consulted.

From a normative perspective, the analysis is grounded in the provisions of Article 260[7] of the Criminal Code of the Republic of Moldova [5]; Law No.133/2011 on the Protection of Personal Data [10]; Articles 132[1]-132[8] and 134[3]-134[5] of the Criminal Procedure Code of the Republic of Moldova [6]; Law No.59/2012 on Special Investigative Activity [12]; Law No.50/2012 on the Prevention and Combating of Organized Crime [13]; as well as the standards established by the Budapest Convention on Cybercrime [4] and Article 8 of the European Convention on Human Rights [3].

The comparative analysis also encompassed the examination of the Romanian normative framework in the field of cybercrime — particularly Law No.161/2003 and the relevant provisions of the currently applicable Romanian Criminal Code — with a view to identifying regulatory models potentially applicable of "lege ferenda" within the Republic of Moldova.

The empirical component of the research constitutes the original foundation of the study and confers upon it a high degree of practical relevance. A total of 1,142 judicial decisions delivered in cases involving an organized criminal group (OCG) component in the Republic of Moldova during the period 2015-2025 were analyzed, all of which were available through the official judicial platform instante.justice.md. Of these, 1,126 contained exploitable PDF text, representing 98.6% of the total sample.

Each judicial decision was examined from the perspective of the typology of predicate offences, the numerical structure of the OCG, the categories of evidentiary means administered, the presence of transnational elements, the indicators concerning the use of false or stolen identities, and the criminal investigation authority involved. Data processing was conducted through both quantitative and qualitative methods, the results being systematized into thematic categories relevant to the methodological issues under examination.

This empirical basis — unique within Moldovan forensic doctrine due to its scale — enabled the identification of patterns regarding the use of fictitious identities, the typologies of electronic traces most frequently administered as evidence, and the evidentiary obstacles generated by the interference with the legal regime governing personal data protection.

Discussions and results obtained. I. Identity Theft as an Instrument of the Organized Criminal Group. The analysis of the 1,142 judicial decisions demonstrated that false or stolen identities are instrumentally employed by organized criminal groups (OCGs) in diverse and systematic ways, constituting an element of criminal infrastructure rather than an objective in itself. The predominant offence in which this practice was identified is drug trafficking (486 cases, representing 42.6% of the total sample), where fictitious identities are used primarily for the role of courier — the most frequently documented function within the examined case files (853 references) — and for the role of intermediary (175 references).

The use of false identities within these operational roles fulfills a distinct function in the internal economy of the OCG: it creates a layer of operational protection between the leader of the group and the concrete criminal act, thereby reducing the exposure of the command structure to the risks of identification and criminal liability.

In cases involving fraud (225 cases) and smuggling (150 cases), false identities serve the purpose of creating fictitious legal entities, fraudulently accessing financial services, and concealing the origin of criminal proceeds. This systemic use demonstrates that, within the context of organized criminal groups (OCGs), identity theft does not constitute an isolated offence, but rather an instrument integrated into the broader mechanism of organized criminal activity, thereby requiring a distinct methodological approach from that applicable to the investigation of identity theft committed by individual offenders.

The empirical analysis further revealed that, in 5 cases within the examined sample, the OCG was coordinated from within penitentiary institutions. In such circumstances, false identities acquire additional significance as instruments facilitating conspiratorial communication and the execution of instructions issued by the incarcerated leader.

From a forensic perspective, it is particularly significant that transnational elements were identified in 55.9% of the analyzed cases, the states most frequently referenced being Romania (325 cases), Ukraine (288 cases), and Germany (238 cases). This transnational dimension substantially increases the complexity of the investigation, given that the stolen identity data frequently originate from information systems located in other states, while the electronic evidence is often stored on extraterritorial servers. The authors' original empirical conclusion — confirmed by the structure of the examined case files — is that the investigation of identity theft committed by transnational OCGs predominantly involves interaction with at least one additional national legal system, thereby exponentially multiplying the procedural obstacles encountered during criminal proceedings. The empirical analysis revealed that electronic traces constitute the dominant category of evidence in organized crime cases: data extracted from mobile phones was used in 926

cases (82.2%), IMEI data in 921 cases (81.8%), communications through digital platforms – Telegram, Viber, and Facebook – in 547 cases (48.6%), and GPS location data in 179 cases (15.9%).

Electronic transactions were relied upon as evidentiary means in 147 cases (13.1%), while video surveillance footage (CCTV) was utilized in 102 cases (9.1%). This evidentiary structure demonstrates that the forensic investigation of organized criminal groups (OCGs) is, in its very essence, an investigation of electronic traces, thereby placing it structurally within the sphere of interference with the legal regime governing the protection of personal data.

II. The three Dimensions of the Interference. Building upon the empirical data presented and the normative analysis conducted, we propose the identification of three distinct dimensions in which the interference between personal data protection and the exigencies of forensic investigation concretely manifests itself in cases of identity theft committed by organized criminal groups (OCGs).

The first dimension concerns the collection and evidentiary exploitation of digital traces specific to identity theft. Such traces – including IP addresses, session cookies, metadata associated with forged documents, the history of electronic transactions, and GPS location data – constitute personal data within the meaning of Law No.133/2011, which implies that access thereto by criminal investigation bodies is subject to differentiated judicial authorizations regulated under Articles 132¹-132□ of the Criminal Procedure Code of the Republic of Moldova [6].

In this context, Gheorghiță M. observes that "the global changes that are rapidly intensifying across all spheres of modern society, connected to scientific and technological progress in the field of computerized electronic technologies, dictate new directions within national forensic science" [1, p. 15], thereby requiring the continuous adaptation of investigative methodologies to emerging typologies of digital traces.

The interference arises where evidentiary urgency necessitates the immediate access to such data, while the authorization procedure – legitimate in itself – introduces operational delays capable of leading to the irreversible loss of digital traces.

An essential forensic particularity of electronic traces in cases involving identity theft committed by organized criminal groups (OCGs) resides in their ephemeral character: unlike traditional material traces, which physically persist at the crime scene, digital data are subject to automatic deletion cycles configured by service providers, may be overwritten upon the reactivation of the information system, or become inaccessible through the mere modification of access credentials.

The empirical analysis demonstrated that OCG members deliberately exploit this vulnerability by using applications based on ephemeral messaging systems and prepaid telephone cards characterized by short operational cycles. Roman D. emphasizes that the conditions governing the conduct of special investigative measures (SIMs) represent "the totality of principles and rules which ensure, on the one hand, the balance of the individual's interests – namely the right to the secrecy of private life – and, on the other hand, the interests of society in the effectiveness of combating criminality, in the timely detection of offences, and in their prevention and suppression" [16, p. 117].

In cases of digital identity theft, however, this balance becomes particularly difficult to calibrate precisely because of the speed with which electronic traces disappear or become inaccessible.

The second dimension concerns access to data stored on extraterritorial servers belonging to encrypted communication platforms. Organized criminal groups (OCGs)

operating in the Republic of Moldova systematically use Telegram, Viber and WhatsApp for the coordination of criminal activities – these platforms being identified in 547 cases within the analyzed empirical database. OCG members deliberately avoid communication through conventional mobile telephony precisely because the traffic data retained by telecommunications operators are accessible to criminal investigation bodies through the procedures established under Articles 134⁴-134⁵ of the Criminal Procedure Code of the Republic of Moldova [6].

The data stored on the servers of these platforms are subject to the legislation of the states in whose territory the respective servers are located, which renders national access procedures, in practice, either inapplicable or excessively slow. This methodological gap is further aggravated by the absence, within the Criminal Procedure Code of the Republic of Moldova, of a distinct procedure governing the search and seizure of computer data, analogous to that provided by the Budapest Convention on Cybercrime [4]. This legislative deficiency requires urgent remedial action and constitutes a "lege ferenda" issue with a direct impact upon investigative efficiency.

The third dimension concerns the particularities of international cooperation in cases involving organized criminal groups (OCGs) with a digital component. Requests for mutual legal assistance aimed at obtaining electronic data involve lengthy procedures that are incompatible with the evidentiary urgency specific to the investigation of OCGs. The Budapest Convention on Cybercrime (Budapest, 2001) establishes mechanisms for expedited cooperation; however, their practical effectiveness depends upon the degree of ratification and implementation within the requested states, the technical capacity of the authorities of the requested state, and the political willingness to cooperate [4].

The transnational dimension identified in 55.9% of the analyzed OCG cases – with frequent references to Romania, Ukraine, and Germany – illustrates the scale of this problem for Moldovan judicial practice and highlights the necessity of developing specific cooperation protocols adapted to the urgency inherent in digital investigations.

III. Specific Evidentiary Vulnerabilities and Their Methodological Consequences. The identified normative interference generates, within investigative practice, a series of specific evidentiary vulnerabilities that affect both the quality and the admissibility of digital evidence in cases involving identity theft committed by organized criminal groups (OCGs). The first vulnerability concerns the risk of exclusion of evidence obtained in violation of the authorization procedures established under Articles 94-96 of the Criminal Procedure Code of the Republic of Moldova [6].

Where the investigator, acting under the pressure of evidentiary urgency, accesses personal data without the corresponding judicial authorization, the evidence thereby obtained becomes susceptible to exclusion from the criminal proceedings, in some instances irreversibly compromising the prosecution. This reality is reflected in the 30.4% rate of reclassification of charges involving an OCG component identified within the analyzed case law, which signals, inter alia, the existence of systematic evidentiary difficulties in proving organized criminal activity within the digital environment.

The second vulnerability concerns the integrity of the chain of custody of digital evidence. Unlike traditional material evidence, electronic data may be altered, copied, or deleted without leaving visible traces, thereby requiring the use of specialized technical procedures for extraction and preservation – including cryptographic hashing, forensic imaging of storage devices, and audit logs – capable of guaranteeing the authenticity and integrity of the data relied upon as evidence.

The absence of nationally regulated methodological standards explicitly governing

this matter constitutes a legislative and operational gap identified within the present research, with direct consequences for the admissibility of digital evidence before judicial authorities.

The third vulnerability concerns the risk of overlap between the personal data of victims and those of OCG members within the investigative process. Identity theft, by its very nature, involves the exploitation of the victim's personal data, which acquire a dual evidentiary relevance: they document both the offence suffered by the victim and the criminal activity of the perpetrators.

This overlap creates parallel – and at times conflicting – obligations for criminal investigation bodies: on the one hand, the obligation to use the victim's data as evidentiary material; on the other hand, the obligation to safeguard the victim's private life in accordance with Law No.133/2011 [10]. The management of this dual obligation requires the development of specific methodological protocols, which are currently absent from the practice of criminal investigation authorities in the Republic of Moldova.

From the perspective of the implications for investigative practice, we consider that criminal investigation bodies and the PCCOCS – identified as the investigative authority in 263 of the analyzed cases – must develop specialized competencies in the digital investigation of identity theft committed by organized criminal groups (OCGs). Such competencies should include, inter alia: the initiation and execution of data preservation procedures addressed to electronic service providers, the use of forensic extraction tools for mobile phones and information systems, and the evidentiary exploitation of metadata in compliance with the admissibility standards established in the case law of the European Court of Human Rights.

The specialized training of investigators in these fields constitutes a prerequisite for the effectiveness of any improved normative framework.

IV. The Framework for Normative and Operational Balance. The analysis of the case law of the European Court of Human Rights demonstrates that not every access by criminal investigation authorities to an individual's electronic data automatically constitutes a violation of the right to private life guaranteed under Article 8 of the European Convention on Human Rights. The Court has developed a tripartite test – legality, legitimate aim, and necessity and proportionality – which does not exclude digital investigations, but rather disciplines them by imposing adequate procedural safeguards against arbitrary use [3].

Applied in cases involving organized criminal groups (OCGs), this test presupposes that access to the identity data of group members is justified where there exists a documented reasonable suspicion and where the investigative measures employed are proportionate to the seriousness of the offences under examination and to the investigative alternatives available. The case law of the European Court of Human Rights in the cases of Klass and Others v. Germany and Uzun v. Germany established that the state enjoys a margin of appreciation in configuring surveillance measures, provided that effective safeguards against abuse exist — safeguards equally applicable within the context of the digital investigation of OCGs.

We consider that the resolution of the identified interference cannot consist in subordinating one value to the other – neither may data protection be sacrificed in favour of repressive efficiency, nor may forensic investigation be paralysed by excessive protectionism. We propose the articulation of a balancing model structured around three interdependent components.

The starting point consists in the explicit regulation of the obligation of immediate

preservation of digital data – a freeze-type procedure – adapted to the specific nature of volatile electronic traces and distinct from the general procedures governing the seizure of objects regulated under Articles 126-128 of the Criminal Procedure Code of the Republic of Moldova [6].

This procedure, recommended by the Budapest Convention on Cybercrime [4], would enable criminal investigation authorities to request service providers to preserve data without effectively accessing them, the actual access subsequently being authorized through the ordinary judicial procedure. In this manner, the urgency of preservation would be separated from the judicial authority governing access.

The second component concerns the differentiation of authorization regimes according to the categories of data involved and the degree of intrusiveness of the measure employed. Access to traffic metadata – namely, who communicated with whom, when, and from where – requires a different authorization standard from that applicable to access to the actual content of communications, whereas treating these categories uniformly generates either unjustified overprotection of metadata or the trivialization of access to content.

Such differentiation is already recognized within the European doctrine of data protection and in the case law of the European Court of Human Rights, and therefore requires explicit transposition into the Criminal Procedure Code of the Republic of Moldova [6], through the establishment of clear authorization thresholds correlated both with the degree of intrusiveness of each category of data and with the nature of the offences under investigation.

The third component concerns the strengthening of international cooperation specific to OCG cases involving a digital component, through accelerated protocols and operational contact points capable of overcoming the inherent slowness of traditional mutual legal assistance procedures, while relying upon the already existing mechanisms of Europol, Interpol, and the Budapest Convention on Cybercrime [4].

The implementation of this balancing model requires not only legislative reforms, but also substantial investments in the institutional capacity of criminal investigation bodies. The digital investigation of identity theft committed by organized criminal groups (OCGs) necessitates specialized equipment for forensic data extraction, software applications designed for the analysis of metadata and electronic connections, as well as personnel possessing specialized training in digital forensic science.

The PCCOCS – identified as the investigative authority in 263 of the analyzed cases – represents the institution with the greatest potential to develop such specialized capacity at the national level, benefiting from the experience accumulated in the investigation of transnational organized criminality.

We consider that the allocation of dedicated resources for the training of investigators in digital forensic science and for the acquisition of forensic extraction equipment constitutes an institutional priority with a direct impact upon investigative efficiency, complementary to any normative reform.

Conclusions. The present scientific undertaking has demonstrated that the interference between personal data protection and the exigencies of forensic investigation in cases of identity theft committed by organized criminal groups (OCGs) constitutes an autonomous methodological problem, manifested concretely across three distinct dimensions: the collection of volatile digital traces under differentiated authorization regimes, access to data stored extraterritorially on encrypted communication platforms, and international cooperation conducted under conditions of evidentiary urgency. The

identification and conceptualization of this issue as an independent methodological entity represents the principal original contribution of the present research.

The analysis of 1,142 judicial decisions delivered during the period 2015-2025 revealed that electronic traces – telephone data (82.2%), IMEI data (81.8%), and communications conducted through digital platforms (48.6%) – constitute the dominant evidentiary category in OCG cases within the Republic of Moldova, while the transnational dimension identified in 55.9% of the cases substantially increases the complexity of accessing such evidence. These empirical findings, unprecedented within national forensic doctrine, confirm that the examined interference does not represent a marginal phenomenon, but rather an ordinary reality of Moldovan judicial practice.

We consider that resolving this interference requires not a choice between the two competing values, but the articulation of a model of normative and operational balance founded upon the immediate preservation of digital data, the differentiation of authorization regimes, and the strengthening of specialized international cooperation. The introduction into the Criminal Procedure Code of a distinct procedure governing the search and seizure of computer data, in coherence with the obligations assumed by the Republic of Moldova through its accession to the Budapest Convention on Cybercrime, constitutes a priority direction of legislative reform with a direct impact upon the effectiveness of the forensic investigation of OCGs within the digital environment.

The interference analyzed in the present study transcends the national context: it reflects a structural challenge faced by all legal systems adhering to European standards of data protection, under conditions in which digitalized organized criminality evolves more rapidly than the normative response capacity of states. Consequently, the methodological and legislative solutions developed at the national level must remain compatible with European and international developments in the field, so as not to generate new gaps in cross-border cooperation relating to the investigation of OCGs with a digital component.

Bibliographical references

1. Gheorghiță M. Tratat de metodică criminalistică. Chișinău: CEP USM, 2015. 450 p.
2. Ostavciuc D., Odagiu Iu. Metodica cercetării infracțiunilor comise de grupuri criminale organizate. Chișinău: Academia „Ștefan cel Mare", 2020. 168 p.
3. Convenția Europeană pentru Apărarea Drepturilor Omului și a Libertăților Fundamentale. Roma, 04.11.1950. Ratificată de Republica Moldova prin Hotărârea Parlamentului nr.1298-XIII din 24.07.1997.
4. Convenția Consiliului Europei privind criminalitatea informatică (Budapesta, 23.11.2001). Ratificată de Republica Moldova prin Legea nr.6-XVI din 02.02.2009. În: Monitorul Oficial al Republicii Moldova, nr.40-41/114 din 27.02.2009.
5. Codul penal al Republicii Moldova nr.985-XV din 18.04.2002, republicat. În: Monitorul Oficial al Republicii Moldova, nr.72-74/195 din 14.04.2009, cu modificările ulterioare.
6. Codul de procedură penală al Republicii Moldova nr. 122-XV din 14.03.2003, republicat. În: Monitorul Oficial al Republicii Moldova, nr.248-251/699 din 05.11.2013, cu modificările ulterioare.
7. Directiva 95/46/CE a Parlamentului European și a Consiliului din 24.10.1995 privind protecția persoanelor fizice în ceea ce privește prelucrarea datelor cu caracter personal și libera circulație a acestor date. Disponibil: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:31995L0046.
8. Directiva 2013/40/UE a Parlamentului European și a Consiliului din 12.08.2013

privind atacurile împotriva sistemelor informatice și de înlocuire a Deciziei-cadru 2005/222/JAI a Consiliului. Disponibil: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=celex:32013L0040.
9. Regulamentul (UE) 2016/679 al Parlamentului European și al Consiliului din 27.04.2016 privind protecția persoanelor fizice în ceea ce privește prelucrarea datelor cu caracter personal și privind libera circulație a acestor date și de abrogare a Directivei 95/46/CE. Disponibil: https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A32016R0679.
10. Legea Republicii Moldova nr.133 din 08.07.2011 privind protecția datelor cu caracter personal. În: Monitorul Oficial al Republicii Moldova, nr.170-175/547 din 14.10.2011.
11. Legea privind protecția datelor cu caracter personal nr.195 din 25.07.2024. În: Monitorul Oficial nr.367-369/574 din 23.08.2024.
12. Legea Republicii Moldova nr.59 din 29.03.2012 privind activitatea specială de investigații. În: Monitorul Oficial al Republicii Moldova, nr.113-118/373 din 08.06.2012.
13. Legea Republicii Moldova nr.50 din 22.03.2012 privind prevenirea și combaterea criminalității organizate. În: Monitorul Oficial al Republicii Moldova, nr. 103/343 din 29.05.2012.
14. Legea pentru modificarea unor acte normative (modificarea Codului penal și a Codului contravențional), nr.136 din 06.06.2024. În: Monitorul Oficial al Republicii Moldova, 2024, nr.245-246, 353.
15. Hotărârea Guvernului Republicii Moldova pentru aprobarea Regulamentului privind armonizarea legislației Republicii Moldova cu legislația Uniunii Europene, nr.1171 din 28.11.2018. În: Monitorul Oficial al Republicii Moldova, 2018, nr.499-503, 1314.
16. Roman D. Temeiurile și condițiile de efectuare a măsurilor speciale de investigații. Teză de doctor în drept. Chișinău, 2020. 210 p.
17. Botnari I. Particularitățile cercetării infracțiunilor comise de grupuri criminale organizate dirijate din penitenciare. În: Legea și Viața, 2023, nr.5, p.312-319. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/312-319_4.pdf.
18. Brînza S., Stati V. Furtul de identitate: anatomia unei infracțiuni în era digitală. În: Studia Universitatis Moldaviae, Revista științifică a Universității de Stat din Moldova, 2025, nr.8(188). p.35-44. Disponibil: https://ojs.studiamsu.md/index.php/stiinte_sociale/article/view/6840/9203.
19. Gheorghiță M. Caracteristica și modelul criminalistic al infracțiunilor. În: Avocatul Poporului, 2012, nr.7-8, p.14-18. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/5.Caracteristica%20si%20modelul%20criminalistical%20al%20infractiunilor.pdf.
20. Gugulan E. Analiza cadrului normativ privind datele cu caracter personal. În: Anale ştiinţifice ale Academiei „Ştefan cel Mare" a MAI al RM: Ştiinţe Juridice. Nr. XVIII(2) / 2018 / ISSN 1857-0976. p.103-110. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/103-110_5.pdf.
21. Ostavciuc D. Protecția datelor cu caracter personal în procesul penal – analiza doctrinei și standardele UE. În: Conferința "European integration through the strengthening of education, research, innovations in Eastern Partnership Countries", 2th Edition, Chisinau, Moldova, May 16-17, 2022. p.77-85. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/p-77-85_0.pdf.

UDC 342.9:008(477) **DOI: https://doi.org/10.5281/zenodo.20809485**

LEGAL CULTURE AS A FACTOR IN THE EFFECTIVENESS OF ADMINISTRATIVE AND LEGAL REGULATION: A THEORETICAL AND LEGAL PERSPECTIVE

Mykola KNYHNYTSKYI,
PhD,
Deputy Head, Department of Law,
Academician I.M. Lutskyi, King Danylo University,
Ivano-Frankivsk, Ukraine
ORCID: 0009-0001-6206-5219

Abstract
This article presents a theoretical and legal analysis of the relationship between legal culture and the effectiveness of administrative and legal regulation in the context of contemporary transformations in public administration. It is established that legal culture serves not only as the value-based foundation of law enforcement, but also as a key subjective factor determining the quality of interaction between public authorities and citizens. The structure of legal culture is examined through the prism of administrative procedures. It is argued that low levels of legal awareness and legal nihilism are the main determinants of the dysfunction of administrative and legal norms. Ways to enhance the effectiveness of legal regulation through the digitalisation of public services and the humanisation of the administrative process are proposed.
Keywords: legal culture, administrative and legal regulation, effectiveness of law, public administration, legal nihilism, administrative procedures, digitalisation.

CULTURA JURIDICĂ CA FACTOR AL EFICIENȚEI REGLEMENTĂRII ADMINISTRATIV-JURIDICE: O PERSPECTIVĂ TEORETICO-JURIDICĂ

Abstract
Acest articol prezintă o analiză teoretico-juridică a raportului dintre cultura juridică și eficiența reglementării administrativ-juridice în contextul transformărilor contemporane din administrația publică.
Autorul constată că cultura juridică servește nu doar drept fundament axiologic al aplicării dreptului, ci și un factor subiectiv esențial care determină calitatea interacțiunii dintre autoritățile publice și cetățeni. Structura culturii juridice este examinată prin prisma procedurilor administrative. Se argumentează că nivelul scăzut al conștiinței juridice și nihilismul juridic constituie principalii factori determinanți ai disfuncționalității normelor administrativ-juridice. Sunt propuse modalități de sporire a eficienței reglementării juridice prin digitalizarea serviciilor publice și umanizarea procesului administrativ.
Cuvinte-cheie: cultură juridică, reglementare administrativ-juridică, eficiența dreptului, administrație publică, nihilism juridic, proceduri administrative, digitalizare.

Introduction. The processes of European integration and legal reform in Ukraine call for a rethinking of traditional approaches to administrative regulation. The effectiveness of legal norms depends not only on their formal perfection, but also on the willingness of society and public servants to accept these norms as fair and binding. In this context, legal culture becomes the 'soft' regulator that ensures the viability of 'hard' administrative regulations. Sociological and legal observations in recent years indicate that without an adequate level of legal awareness, any administrative reforms are doomed to

formalism and low efficiency.

Subject of the study is the social relations arising in the sphere of administrative and legal regulation under the influence of factors of legal culture.

Purpose of the article is to explore the role of legal culture as an internal regulator of the effectiveness of administrative and legal norms and to identify ways of minimising legal nihilism in public administration.

Discussions and results obtained. The state of academic research into the issue of legal culture in the context of public administration indicates a gradual but irreversible shift from an outdated formal-legal approach to a modern anthropocentric one. Within this paradigm, the individual, their rights, freedoms and legitimate interests become the central focus of legal attention, rather than merely an element of public administration or an object of state influence. As M.I. Kharvoniuk rightly notes in his fundamental analysis of trends in the rule of law and crime dynamics in Ukraine for the period 2019-2024, the current state of social relations requires the state to fundamentally and systematically rethink the role of legal institutions as such [8, p. 298]. The author emphasises that without adapting the institutional framework to the real socio-cultural demands and moral values of society, any attempt at administrative reform will remain merely on paper. In particular, it is worth emphasising that the actual effectiveness of administrative regulations is directly determined by the level of public trust in state institutions. This thesis finds substantial empirical confirmation in the Razumkov Centre's reports for 2025, which indicate that citizens' legal culture and their willingness to voluntarily comply with administrative regulations are directly correlated with the level of transparency and accountability of the state apparatus [1, p.15].

In contemporary legal doctrine, administrative and legal regulation is no longer viewed as a purely punitive, coercive or restrictive mechanism of state influence. On the contrary, in the light of European standards of 'good governance', it serves as a key instrument for ensuring, realising and protecting human rights and freedoms in the complex daily interactions between the individual and the state apparatus. Yu.V. Orlov, analysing the challenges facing the legal system, emphasises that in the context of a protracted and large-scale armed conflict, the legal environment inevitably encounters the dangerous and destructive phenomena of 'social anomie' [3, p.104]. This is a specific state of society in which traditional moral filters and legal mechanisms of social control are significantly weakened, and the usual regulators of behaviour lose their authority under the pressure of extreme circumstances. In such complex and volatile circumstances, it is precisely the legal culture of those in positions of authority – officials, civil servants and representatives of administrative bodies – that becomes the decisive subjective factor preventing the state apparatus from taking destructive steps. As P.S. Eprintsev emphasises, a high level of professional legal awareness and ethical maturity on the part of civil servants is, in fact, the only reliable internal barrier that prevents corruption from infiltrating government bodies and minimises the risks of administrative arbitrariness in conditions of legal uncertainty [2, p.73].

Research shows that the multifaceted effectiveness of legal regulation in the complex sphere of modern public administration is not a linear quantity, but is instead revealed through several interrelated and complementary dimensions, each of which is directly grounded in the foundation of legal culture:

1. *Value dimension*: this involves a deep internal perception of each administrative procedure not as a formal burden, but as a fair, legitimate and comprehensible algorithm for interaction between the state and the individual. It is this dimension that provides

the 'social breath' of the law, transforming dry norms into a living instrument of social harmony.

2. *Procedural dimension*: this aspect consists of the unwavering and conscious adherence to high standards of 'good administration', which allows for the radical minimisation of any manifestations of bureaucratic formalism, procedural delays and subjectivity. A culture of due process acts as a safeguard against the administrative apparatus becoming a closed caste.

3. *Technological dimension*: in today's context, this involves the active and professional use of the latest digital tools. This is done with the aim of maximising the objectivity of management decisions, eliminating the corruption-prone 'human factor' and creating a transparent digital trail for every administrative action.

In the context of the extremely complex global challenges currently facing Ukraine, the consistent and systematic implementation of the latest approaches to administrative procedures, as well as an uncompromising and comprehensive response to corruption risks under the extreme conditions of martial law, are not merely another legal task, but a critical strategic priority for ensuring national security and maintaining the state's functional governability [7, p.57]. It should be noted that during periods of crisis, the administrative apparatus is subjected to an enormous workload, which requires officials not only to possess technical knowledge of the law but also a high level of ethical resilience. As leading researchers in the field of public law quite rightly point out, the actual level of legal protection afforded to citizens in their daily and sometimes complex dealings with state authorities is the most important indicator of the viability and humanity of the country's entire legal system.

At the same time, a thorough analysis of current law enforcement practice and official statistics from the Office of the Prosecutor General for the period 2021-2025 provide compelling evidence of serious destructive trends. In particular, the data indicate that numerous offences in the sphere of official duties, abuse of authority and various forms of power abuse are most often a direct and logical consequence of the critically low level of legal culture prevailing in certain parts of the state apparatus [5]. This indicates a profound distortion of professional legal consciousness, where personal gain or bureaucratic indifference takes precedence over serving the public interest.

This state of affairs requires the state not only to step up repressive measures and criminal prosecution, but above all to work systematically towards changing the mindset of public servants. The formation of a new legal culture, based on the principles of integrity, respect for human dignity and the unconditional primacy of the law, is becoming a necessary prerequisite for administrative and legal regulation to transform from an instrument of coercion into an instrument of effective social service. Thus, legal culture serves as the intellectual and moral foundation without which any institutional reform in the sphere of public administration is doomed to stagnation and a loss of public trust.

Moreover, the deeply distorted sense of justice among certain categories of officials –which, in practice, manifests itself in the consistent prioritisation of narrow corporate, clan-based or purely self-serving personal interests over the fundamental public interests of the community and the state – effectively nullifies and reduces to nothing any systematic legislative efforts by the state aimed at the strategic reform of the security, defence and public administration sectors. As researchers H.I. Pishchenko and A.O. Lysenko note, when analysing the structure of contemporary offences, it is precisely this self-serving orientation, combined with the opportunities afforded by office that creates the most dangerous precedents of destructive influence on the system of public govern-

ance [4, p.647]. In this context, legal culture ceases to be merely a theoretical category and becomes a practical safeguard: where the law has gaps, it is culture and ethics that must deter officials from making anti-social decisions.

According to existing academic observations, disregarding the spirit of the law whilst formally adhering to its letter is one of the most dangerous forms of distortion of legal consciousness. This creates an illusion of legality whilst effectively undermining the rule of law. Thus, the systematic and uncompromising overcoming of legal nihilism, which is deeply rooted within the state apparatus itself, becomes not merely a desirable change, but a primary, imperative condition for a real increase in the efficiency of administrative and legal influence on social processes.

The issue of professional misconduct among civil servants in wartime takes on particular urgency. M.I. Kharvoniuk emphasises that times of crisis expose weaknesses in the management system, and if the legal culture of managers is fragile, this inevitably leads to the erosion of standards of lawful conduct and an increase in shadow practices [8, p.301]. Consequently, only through a qualitative transformation of the bureaucracy's internal attitude towards its duties, and through the cultivation of a culture of responsibility and service, is it possible to ensure the effectiveness of administrative and legal regulation that meets the challenges of the modern era and the demands of civil society. Nurturing a new generation of public administrators with a high level of legal culture is a long-term process; however, without it, any institutional transformations will remain merely an imitation of reforms.

The global digitalisation of the public sector, the most striking manifestation of which in Ukraine has been the rapid development and scaling up of the multifunctional 'Diia' platform, is now seen not merely as yet another technical or software update to the state infrastructure, but above all as a fundamental ideological and cultural shift in the 'citizen–state' relationship. The key value of this process lies in the fact that digital algorithms virtually eliminate the so-called 'human factor' at those critical touchpoints where, for decades, it has served as the primary source of systemic corruption, subjectivity and bureaucratic red tape. Thus, the automation of administrative procedures effectively creates a new ethic of digital interaction, based on the principles of speed, equality and transparency, which were previously unattainable within the framework of paper-based document flow.

However, despite the obvious successes of technological progress, it must be understood that digitalisation in itself is not a panacea for all legal ills. As researchers G.I. Pishchenko and A.O. Lysenko rightly point out, the high adaptability of offenders to new digital conditions (which is particularly evident in the sophisticated rise of cyber fraud, manipulation of registers and electronic data) is an alarming indication that purely technical, software or engineering security measures are critically insufficient for the full stabilisation of the rule of law [4, p.648].

The authors emphasise that the technological shell merely changes the form of the offence but does not eliminate its root cause if the individual's legal culture remains distorted. Consequently, at the current stage of administrative and legal regulation, there is an urgent need for long-term, systematic and targeted educational work aimed at fostering legal virtues in both providers and consumers of public services. This involves fostering digital hygiene and legal responsibility, where compliance with the law in the digital environment must become an individual's intrinsic need, rather than merely a consequence of fear of automated monitoring. Consequently, only a harmonious combination of high technology with a high level of legal awareness will enable true effectiveness in

administrative regulation, where the digital platform will become not merely a convenient website, but a space for the realisation of a new model of legal culture.

The legal regime of martial law occupies a special, strategically important place within the overall structure of modern administrative and legal regulation, introducing radical changes to the usual mechanisms of interaction between the state and society [6]. This specific mode of operation of public authority demands of the legal culture of both administrators and ordinary citizens a particular degree of social flexibility, resilience and a high level of awareness. Under martial law, legal culture transforms into a kind of stabilising factor, enabling the system to remain manageable under the pressure of external aggression and internal tension. On the one hand, this regime entails citizens' conscious willingness to accept certain, sometimes substantial, restrictions on constitutional rights and freedoms for the sake of a higher goal – the preservation of the state's sovereignty and territorial integrity. Here, legal culture manifests itself in the form of a high level of patriotic legal consciousness and an understanding of the need for a temporary curtailment of individual freedom in the interests of public safety. Without an appropriate cultural foundation, such restrictions could be perceived as repression, which would inevitably lead to a rise in social discontent. On the other hand, the legal regime of martial law demands exceptional, almost iron-clad self-discipline and responsibility from state authorities and local self-government bodies in matters of strict adherence to the law. In circumstances where administrative bodies are granted expanded discretionary powers, the risk of abuse increases exponentially. It is precisely for this reason that a professional legal culture among civil servants becomes the critical safeguard that prevents 'extraordinary powers' from becoming a tool for arbitrariness or corrupt enrichment.

As demonstrated by the implementation of the provisions of the Act of Parliament of Ukraine 'On the Legal Regime of Martial Law', the effectiveness of administrative measures during this period depends not so much on the severity of sanctions as on the moral unity of the parties involved. Legal culture acts here as a mediator, ensuring a delicate balance between security requirements and the preservation of the fundamental values of democracy. Thus, in wartime, legal culture transforms from an abstract ideal into a practical mechanism for the state's survival, where the authorities' exceptional self-discipline becomes a mirror image of society's trust and patience.

Conclusions. Summing up the results of this theoretical and legal study of the role of legal culture as a fundamental factor in the effectiveness of administrative and legal regulation, the following conceptual conclusions may be drawn:

1. *Legal culture as a central element of law enforcement*. It has been established that legal culture is not merely a theoretical abstraction or a passive backdrop to social life, but acts as a living, integral part of the complex mechanism of administrative and legal regulation. It is precisely this culture that acts as a kind of socio-psychological mediator, ensuring the effective translation of formal legal provisions into the realm of actual lawful behaviour by individuals. Without an adequate level of legal culture, even the most perfect legislative framework remains ineffective, since it is an individual's internal value orientations that determine the degree of compliance with legal norms.

2. *Transformation towards a service-oriented model of the state*. It has been argued that a high level of legal culture, particularly among representatives of public authorities, is a fundamental prerequisite for the successful implementation of a modern service-oriented model of the state. In such a model, a civil servant or public official acts not as a source of unquestionable coercion or bureaucratic pressure, but first and foremost as a professional provider of high-quality public services. This requires a shift away from the

'right to govern' towards the 'right to serve', where the priority is respect for human dignity and the protection of individual rights.

3. *Strategic prospects and determinants of development*. The future prospects for strengthening the legal culture and, consequently, improving the efficiency of administrative regulation, are inextricably linked to three main directions:

a. Firstly, ensuring maximum, physically tangible transparency and accountability across the entire state apparatus;

b. Secondly, the comprehensive digitalisation of administrative processes, which minimises corruption risks and subjectivity [4, p.649];

c. Thirdly, the unwavering implementation of European standards of administrative procedure, based on the principles of predictability, fairness and objectivity.

Bibliographical references

1. Analytical reports by the Razumkov Centre on public trust in law enforcement agencies. 2025. Available: https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-sytuatsii-v-kraini-dovira-do-sotsialnykh-instytutiv-otsinka-problem-shcho-isnuiut-v-ukrainskomu-suspilstvi-lystopad-2025r.
2. Yepryntsev P.S. Organised Crime as a Threat to Ukraine's National Security. In: Prykarpattia Law Review. Issue 6 (65), 2025. pp. 72-76.
3. Orlov Yu.V. Crime and Countering it in Wartime: Criminal Law and Criminological Dimensions. Kharkiv: Pravo, 2023. 252 pp.
4. Pishchenko G.I., & Lysenko A.O. The State, Structure and Trends of Property Crimes. Analytical and Comparative Jurisprudence. Issue No.1, 2025. pp. 645-650.
5. Official statistics of the Office of the Prosecutor General of Ukraine for 2021-2025. Available: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2.
6. On the legal regime of martial law: Law of Ukraine. Bulletin of the Verkhovna Rada. 2015. No.28. Art. 250.
7. Toma M.G., Bodnaruk O.M. Combating Crime in Wartime. In: Scientific Bulletin of the International Humanitarian University. Series: Jurisprudence. 2025. No.74. pp. 55-59.
8. Khavronyuk M.I. Crime in Ukraine in 2019-2024. In: Scientific Bulletin of Uzhhorod National University. Series: LAW. 2025. Issue 89: Part 3. pp. 295-303.

CZU: 343.98:343.62:004.056 **DOI: https://doi.org/10.5281/zenodo.20809620**

CRIMINALISTIC INVESTIGATION OF OFFENCES COMMITTED IN THE ONLINE ENVIRONMENT AGAINST CHILDREN

Sorin Silviu FINTA,
PhD, University Lecturer,
"1 Decembrie 1918" University of Alba Iulia,
Romania
ORCID: 0009-0009-1006-9937

Abstract

The study examines, from a criminalistic and criminal procedural perspective, the investigation of offences committed against children in the online environment, with a particular focus on digital evidence, the protection of child victims, and the integration of financial investigations.

The methodology combines a normative analysis of Romanian substantive criminal law and criminal procedure with an examination of European standards, relevant case law, recent institutional reports, and specialised literature. The research is structured around five main directions: identifying the offender beyond the apparent digital identity; the role of computer searches in the discovery, preservation, and interpretation of data; the contribution of special investigative measures, cooperation with platforms and service providers, and analytical structures; the interviewing of child victims with a view to preventing secondary victimisation; and the tracing of financial flows in cases of online sexual exploitation.

The findings support the view that investigative efficiency depends on an integrated model of inquiry, in which technical data, digital traces, behavioural indicators, and payments are correlated so as to reduce exclusive reliance on the victim's statement. The main conclusion is that the technical performance of the investigation must be accompanied by effective procedural safeguards in order to ensure that the gathering of evidence remains lawful, robust, and compatible with the best interests of the child.

Keywords: criminalistics, minors, online, evidence, search, revictimization, cooperation.

INVESTIGAREA CRIMINALISTICĂ A INFRACȚIUNILOR COMISE ÎN MEDIUL ONLINE ÎMPOTRIVA COPIILOR

Abstract

Studiul analizează, din perspectivă criminalistică și procesual penală, investigarea infracțiunilor comise în mediul online împotriva copiilor, cu accent pe probele digitale, protecția victimei minore și integrarea investigației financiare.

Metodologia combină analiza normativă a dreptului penal și procesual penal român cu examinarea standardelor europene, jurisprudența relevantă, rapoartele instituționale recente și literatura de specialitate. Cercetarea este structurată pe cinci direcții: identificarea autorului dincolo de identitatea digitală aparentă; rolul percheziției informatice în descoperirea, conservarea și interpretarea datelor; aportul metodelor speciale de supraveghere, al cooperării cu platformele și operatorii și al structurilor de analiză; tactica audierii minorului victimă în vederea prevenirii revictimizării; și urmărirea fluxurilor financiare în cauzele de exploatare sexuală online.

Rezultatele analizei susțin că eficiența anchetei depinde de un model integrat de investigație, în care datele tehnice, urmele digitale, elementele comportamentale și plățile sunt coroborate astfel încât dependența exclusivă de declarația victimei să fie redusă. Concluzia principală este că performanța tehnică a investigației trebuie dublată de garanții procedurale efective, pentru ca administrarea probelor să rămână legală, robustă și compatibilă cu interesul superior al copilului.

Cuvinte-cheie: criminalistica, minori, online, probă, percheziție, revictimizare, cooperare.

Introduction. The criminalistic investigation of offences committed against children in the online environment is today situated at the intersection of criminal law, criminal procedure, digital forensics, the special protection of minors, and international judicial cooperation. The increase in the number of cases concerning online recruitment, the distribution of materials depicting child sexual abuse, and digital sexual extortion is also confirmed by recent institutional data, with the DIICOT Activity Report for 2025 explicitly noting the intensification of the phenomenon, including in the form of the self-production and distribution of sexual materials involving minors and grooming activities carried out through social networks and messaging applications [1].

The specific nature of these cases lies in the fact that most relevant evidence is created, transmitted, stored, and deleted in a digital, cross-border, and partly anonymised environment. Consequently, the investigation can no longer be built exclusively through the classic means of criminal prosecution, but requires the rapid preservation of data, the correlation of logs, the analysis of devices, the use of cooperation with service providers, and the integration of financial data into the evidentiary framework [2; 4; 5].

At the same time, in cases involving minors, the legality and effectiveness of the investigation cannot be separated from the obligation to prevent secondary victimisation. Repeated interviews, the absence of a child-friendly setting for the child victim, procedural delays, or unjustified exposure to the case materials may turn the investigation itself into a source of secondary trauma, so that the victimological dimension must remain present at every stage of evidence gathering [4; 7; 8; 9].

One of the objectives of this research is to examine how an investigative model can be constructed that is simultaneously technically effective, legally robust, and compatible with the best interests of the child. At the same time, practical experience supports an integrated model of investigation in which classic evidentiary procedures are complemented by digital forensics, analysis of extracted computer data, cooperation with platforms and operators, protected interviewing tactics, and the tracing of financial flows [10; 13; 17].

The analysis is structured around five coordinates: identification of the offender; computer searches and post-extraction data analysis; special surveillance methods and institutional cooperation; interviewing the child victim; and tracing money transferred in exchange for materials.

Throughout the study, the term “child pornography” is used mainly when discussing the statutory wording of the offence, whereas the descriptive expression “materials depicting child sexual abuse (CSAM)” is preferred, in line with the terminology promoted in recent European literature and guidelines [20].

Methods and materials applied. This study was prepared by using research methods suited to the interdisciplinary nature of the topic, which lies at the confluence of criminal law, criminal procedure, criminalistics, and the investigation of cybercrime. Primarily, the method of legal analysis was used, by examining the relevant national, European, and international rules concerning offences directed against children in the online environment, with an emphasis on provisions relating to criminalisation, the gathering of digital evidence, computer searches, cooperation with service providers, and the procedural protection of the child victim.

The research also used content analysis, applied to doctrinal sources, institutional materials, public reports, and relevant case law. Both specialised works and teaching materials in the field were considered, together with reports and public data issued by specialised bodies and structures, useful for understanding the scale of the phenomenon, offenders’ operating mechanisms, and the practical difficulties encountered in identifying

them, especially in the context of false identities, compromised accounts, VPN networks, or anonymised infrastructures. An important role in shaping the analysis was also played by the examination of judicial practice and relevant case law, both in terms of the gathering of digital evidence and in relation to the standards for protecting child victims during criminal proceedings. In this way, the study seeks not only to present the theoretical normative framework, but also to capture the real difficulties that these cases raise in criminal prosecution and in evidentiary terms.

The present approach is also supported by the author's professional experience in relation to the investigation of acts committed in the digital environment and cases involving minor victims. This practical dimension made it possible to direct the research towards issues that consistently generate difficulties in judicial activity: identifying the real offender behind the digital avatar, preserving and using computer evidence, inter-institutional cooperation, and avoiding the secondary victimisation of the minor through the very conduct of criminal procedures.

The materials used in preparing the study therefore consisted of legislation, specialised doctrine, judicial decisions, and institutional reports, corroborated with observations drawn from professional practice. This approach sought to provide a balanced analysis in which the theoretical perspective is constantly related to the concrete realities of criminalistic investigation in cases concerning offences directed against children in the online environment.

I. General Criminalistic Aspects of the Investigation. The criminal investigation of acts committed against children in the online environment starts from national offences concerning sexual acts with minors, sexual corruption, online recruitment, and child pornography, supplemented by the rules of criminal procedure on technical surveillance, undercover investigators, the preservation and examination of computer data, victim protection, and computer searches. At European level, Directive 2011/93/EU requires Member States to criminalise, among other things, child pornography and the online solicitation of minors for sexual purposes, while the Digital Services Act, Regulation (EU) 2022/2065 on digital services (DSA) has introduced, for very large platforms, a framework for mitigating systemic risks associated with illegal content. In the remainder of the analysis, the term CSAM is used descriptively, while the expression "child pornography" is reserved, as far as possible, for references to the legal name of the offence [2; 3; 4; 5; 20].

In this field, digital evidence, the chain of custody, the standardisation of technical operations, and international cooperation are defining elements of the investigation. From a criminalistic perspective, this means that the object of the inquiry is not limited to the unlawful content, but includes the storage environment, metadata, connection logs, the chronological sequence of actions, and the correlation between accounts, devices, and users, while also taking into account the connection between the special surveillance methods used Europol, Eurojust, INTERPOL cooperation, and the need for protected interviewing of the child victim. The competence to investigate child pornography offences (Article 374 of the Criminal Code) belongs exclusively to the Directorate for Investigating Organised Crime and Terrorism (DIICOT) prosecutor, who usually involves specialised judicial police officers from the Romanian Police structures (Directorate for Combating Organised Crime (DCCO) and Brigade(s) for Combating Organised Crime (BCCO), as applicable) for investigative and examination activities.

The criminalistic investigation of these offences may involve a high degree of complexity and cannot be reduced to a single act, such as seizing a mobile phone or obtaining an IP address. It is, in reality, an evidentiary construction combining the legal component, which legitimises the evidentiary means; the technical component, which makes it possible

to extract and analyse computer data; the operational component, which uses the data in a timely manner; and the victimological component, which involves observing the procedure necessary to protect the child and avoid secondary victimisation. Where one of these components is missing, the investigation becomes fragile: either the evidence becomes contestable, the offender remains unidentified, or the child is revictimised [4, Art. 111, 124, 168].

1.1. Practical Difficulties in Identifying Offenders. The first major difficulty specific to these cases is that digital identity must be associated with physical identity. The offender may use false profiles, temporary accounts, virtual numbers, disposable e-mail addresses, Virtual Private Networks (VPNs), proxies, Tor networks, or compromised devices. The offender may also operate through stolen identities, using the real accounts of other persons to create a false trail and to shift suspicion onto a third party. Under these conditions, a conclusion based exclusively on the profile name, account photograph, or even the subscriber of a connection is methodologically precarious. [16; 17, p. 5-6].

The official policies of platforms reveal the structural limits of identification. X specifies that it does not require users to use their real names and that non-public information is disclosed only on the basis of an appropriate legal process or an emergency request. Meta operates through a dedicated request system for law enforcement authorities and examines requests individually through a specialised team. The practical consequence is that judicial authorities do not receive "the identity of the offender", but a set of raw or only partially correlated data: account identifiers, IP addresses, subscriber data, authentication logs, and possibly device data. The investigation must then transform these data into a procedural identity [15; 16]. From a criminalistic perspective, the IP address remains important, but it is never sufficient. It must be correlated with the exact time of the offence, the internet service provider, subscriber data, the seized terminal, locally found content, browser history, application artefacts, cloud data, and often the financial trail. Where the offender used Virtual Private Network (VPN) or The Onion Router (Tor), the final IP may lead only to an intermediate node. In such situations, evidentiary value shifts towards local artefacts: cache files, access histories, crypto-wallet data, saved conversations, local application databases, cloud synchronisations, and evidence of logins to accounts [4, Art. 168; 10, pp. 14, 44-46].

In addition, identifying the offender also requires a behavioural reading. A false account is not entirely "authorless"; it produces a style of interaction, a selection of platforms, an activity schedule, recurring linguistic formulas, targeting preferences, and payment patterns. Therefore, analytical units must combine technical data with content analysis, Open Source Intelligence (OSINT), and, where applicable, comparisons between several suspicious accounts. In cases of blackmail associated with compromising images or grooming, for example, the same approach formula, the same type of bait photograph, the same sequence of requests, and the same wallet address may reveal the offender's identity, even if each account appears autonomous [10, pp. 6, 29; 12].

1.2. The Central Role of Computer Searches. In many cases, the true evidentiary turning point is the computer search. Under the Criminal Procedure Code, it is "the procedure of examining, discovering, identifying, and collecting evidence stored in a computer system or on a storage medium, carried out by technical means and procedures capable of ensuring the integrity of the information". In cases involving minors, the heightened relevance of the computer search derives not only from the volume of data, but also from the need to separate strictly the information useful to the investigation from the broad mass of sensitive data belonging to the child and the child's family [1; 4; 6].

Improving computer searches should not be reduced to the acquisition of equipment. In cases concerning Child Sexual Abuse Material (CSAM), evidentiary value does

not automatically result from the mere existence or discovery of files after extraction. In practice, defendants often invoke accidental access to the materials or the absence of effective control over the data, in the context of having incidentally opened unsolicited materials. From this perspective, post-extraction analysis becomes essential: for the formulation of the accusation, it is relevant for the evidence to show whether the materials were requested by the defendant, whether they were accessed repeatedly, whether they were downloaded and/or archived in a coherent structure, whether they were protected by passwords or other additional measures, whether payments or patrimonial benefits associated with access existed, and whether there was subsequent distribution to other accounts, devices, or users [4; 10].

Consequently, the relevance of forensic software lies especially in its capacity to organise and interpret data after extraction: indexing, timeline reconstruction, correlating local artefacts with access logs, identifying deleted files, browsing history, cloud synchronisations, virtual wallets, conversations, and metadata. Equally important is the manner in which investigating officers present their conclusions in the report on the analysis of data: it must clearly indicate the source of the data, the method used to preserve integrity, the tools used, the analytical path followed, the elements supporting the deliberate nature of access, and the inherent limits of interpretation. A precise and intelligible report transforms technical findings into valid judicial evidence and reduces the risk that the analysis will be perceived as a mere listing or enumeration of files [4; 10].

1.3. Special Surveillance Methods and the Contribution of Information Analysis Units. The computer search is not the only relevant instrument. In many situations, identifying the offender or documenting criminal activity requires resorting to special surveillance methods. The Criminal Procedure Code includes, within the scope of technical surveillance, the interception of communications, access to a computer system, and other procedures suitable for certain serious offences, while Article 148 regulates the use of undercover investigators, including in the digital environment [4, Arts. 138, 148]. In cases of grooming, distribution of materials depicting child sexual abuse (CSAM – Child Sexual Abuse Material in specialised literature), or access to closed forums, the use of an online investigator may be decisive. Nevertheless, in such cases, the line between documenting an offence and provoking it must be treated with the utmost caution. The investigator may not replace the offender and may not artificially create the criminal intent, but may only document an activity already taking shape or gain access to a criminal circuit in order to map it evidentially. From a tactical point of view, maximum usefulness is achieved when the data obtained through undercover investigation are corroborated with the results of computer searches and with data provided by platforms or operators [1; 4, Art. 148].

The modern investigation of the online exploitation of children is too broad to rely exclusively on the work of the undercover investigator or of a single investigator. The number of reports, the volume of files, the number of accounts, the variety of platforms, and the speed with which offenders migrate between applications require the contribution of specialised information analysis structures. Their role is to transform dispersed data by centralising and interpreting them. Interpretation may concern practical aspects necessary to prove the criminal activity: identifying associated accounts, mapping links between users, extracting Open Source Intelligence (OSINT) indicators, comparing hashes, prioritising urgent cases, and integrating financial components into the risk model [10, pp. 6, 44-46; 13].

The scale of the phenomenon explains why, without such units, investigations are overwhelmed numerically. National Center for Missing & Exploited Children (NCMEC) states that in 2024 the CyberTipline received 20.5 million reports, of which 20.3 million

came from electronic service providers. The published data also indicate approximately 546,000 reports concerning the online solicitation of minors for sexual purposes, a major increase compared with previous years, more than 51,000 reports of urgent or imminent danger, and the fact that only ten providers generated more than 95% of reports. These figures demonstrate that the selection, prioritisation, and integrated analysis of data are indispensable [11, p. 1; 12].

In addition, INTERPOL explicitly describes victim identification as an activity involving the detailed analysis of images and videos in order to locate and rescue children, in which investigators often start from digital evidence and retrospectively reconstruct the scene, the context, and the identity of the victim. The International Child Sexual Exploitation database (ICSE) uses comparison software and information exchange and, according to data published by INTERPOL, has already contributed to the identification of a very large number of victims and offenders. Therefore, content analysis serves not only an incriminating purpose, but also an immediate protective purpose: identifying and removing the child from the abusive situation [13; 14].

Realistically, a considerable part of the relevant data is held by private platforms. Facebook and Instagram operate within the Meta ecosystem, where requests from judicial authorities are submitted through the Law Enforcement Online Request System and are examined individually by a specialised team. X has its own law enforcement guidelines and discloses non-public data only on the basis of valid legal requests or justified emergencies. An effective investigation must therefore know not only "what data it wants", but also how to formulate the request procedurally: preservation requests, requests for subscriber data, logs, content, emergency disclosure of information, or data associated with other identifiers [15; 16].

In relation to electronic communications operators, the role is different but equally important. Vodafone's transparency report shows that law enforcement authorities use communications data such as the IP address, telephone number, time, duration, location, and subscriber data to investigate serious offences, while interception of content is reserved for the most intrusive cases and must be subject to strict laws and judicial oversight. This means that, in an investigation involving minors, the operator rarely provides the "solution", but offers evidentiary links essential for establishing the user, the timing, and the digital mobility of the offender [17, pp. 5-6].

For Romania, market coordinates must be updated: Orange completed its merger with Orange Romania Communications on 1 June 2024, and, from 1 October 2025, Telekom Romania Mobile became a company majority-controlled by Vodafone Romania. From a practical perspective, this means that the institutional relationship with the "large operators" must be conceived according to the current structure of the market and the existing operational channels, not according to historical names used reflexively [18; 19].

From this perspective, the modern investigation requires public laboratory capabilities that combine secure collection, rapid triage, correlation of logs, content analysis, and standardised evidentiary reporting. In the absence of these capabilities, the large volume of data and the volatility of the online environment may turn even extracted information into a resource that is insufficiently used or difficult to translate into judicial evidence.

1.4. Tactics for Interviewing the Child Victim. Interviewing the child victim is probably the most delicate procedural act in these cases. The Criminal Procedure Code provides that when the injured person is a minor, the interview is recorded by audio or audio-video means in all cases and, if this is not possible, the reason must be recorded. In addition, the interview must be conducted immediately or without unjustified delay. For a

minor witness under the age of 14, the interview takes place, in principle, in the presence of the parent, guardian, or the person or institution to whom the minor has been entrusted; if there are suspicions of influence or a conflict of interest, the representative of the competent authority or another appropriate person takes part, and, if the judicial authority considers it necessary, a psychologist may be present. The law expressly requires that the interview must not produce negative effects on the child's psychological condition [4, Art. 111 para. 8-9, Art. 124].

Normatively, these safeguards are correct; in practice, they may become sources of additional pressure if the procedure is not organised properly. Tactics for interviewing the child victim show that open questions, an appropriate rapport with the minor, avoidance of suggestion, and the limitation of duplicative interviews increase both the quality of information and the psychological protection of the child. The best-practice guide on child interviewing prepared by the United States authorities, as well as models based on the National Institute of Child Health and Human Development protocol (NICHD), emphasise that the minor should not be required to relive the traumatic experience several times merely because procedures are not sufficiently well organised [21].

The interview should be conducted as early as possible, in a safe setting adapted to the child, by a trained person, with as few interviews as possible and, as far as possible, by using audio-video recording in order to avoid unnecessarily repeating the statement. The Council of Europe Guidelines on child-friendly justice and the Barnahus model point in the same direction: coordinated, multidisciplinary, and child-friendly intervention reduces the risk of secondary victimisation and, at the same time, improves the quality of evidence [22; 23].

In this logic, the case law of the European Court of Human Rights is instructive. In S.N. v. Sweden, the Court analysed the use of the video interview of a minor in the context of defence guarantees, confirming the relevance of such a procedural solution when the requirements of a fair trial are maintained [8].

Even clearer is B v. Russia, in which the Court held that the repeated interviewing of the child, direct contact with the offenders, and the lack of appropriate procedural adaptations generated severe trauma and led to a finding of a violation of Article 3. The Court's press release mentions 12 interviews over a period of one year and seven months, the loss of the first video recording, and the absence of sufficient measures to minimise the number of interviews and adapt the procedure to the status of a child victim. This judgment shows that "more procedure" does not necessarily mean "more protection"; sometimes, the repetition of criminal investigation acts is itself a factor of secondary victimisation [9].

In conclusion, the tactics for interviewing the child victim should follow three rules: uniqueness as far as possible, specialisation of the interviewer, and intelligent use of audio-video recording. The aim is not only to protect the child, but also to ensure the quality of the evidence: a statement taken once, in an appropriate setting, is often more faithful and more useful evidentially than four or five partially inconsistent statements obtained under institutional pressure [4, Arts. 111, 124; 9].

The protection of the minor victim is not limited to the interview. The Criminal Procedure Code also allows other protective measures, and in the case of threatened witnesses solutions may be ordered such as surveillance of the home, protection of identity data, or audio-video interviewing with distortion of the image and voice. Even though not all these measures apply automatically to every child victim, their existence shows that the procedural system can be made flexible in order to limit the child's exposure and the risk of intimidation [4, Arts. 113, 126]. At the same time, the investigation must remain compatible with the right of defence. This is precisely where the procedural ten-

sion arises: how can the child are protected without compromising the defence's ability to challenge the evidence? The answer is not the direct confrontation of the child with the defendant, but an evidentiary architecture involving diverse means: video interview, the possibility of formulating questions through the magistrate or specialist, the use of a single high-quality interview, and corroboration with digital evidence, platform data, and financial elements. The stronger the technical evidence, the less pressure is placed on the child's statement [8; 10, pp. 29, 44-46].

One of the most difficult and most important missions of the investigation is to identify minor victims from files discovered during computer searches. In these cases, the investigation seeks not only to establish guilt for possession, distribution, or production of Child Sexual Abuse Material (CSAM), but also to ensure the effective rescue of a child who may be in an ongoing abusive situation. For this reason, the criminalistics of image and context becomes essential [13]. The meticulous analysis of the background, objects, inscriptions, reflections, ambient sounds, accent or spoken language, the time zone inferred from metadata, camera characteristics, clothing, furniture, and other markers may contribute to the identification process. Each element may function as a vector of localisation. In parallel, hash comparison and dedicated international databases are used, especially International Child Sexual Exploitation database (ICSE), which make it possible to connect new files to already known series or to previous investigations [13; 14]. It must be observed that victim identification follows a different logic from offender identification. While the offender may be proven by correlating accounts, devices, and financial flows, the victim is often identified through the "background" details of the material and through international content comparison. This justifies the existence of specialised units and permanent cooperation with INTERPOL or other structures with similar responsibilities. Treating the analysis of files merely as an activity of criminal inventory means losing sight of their rescue function [13; 14].

1.5. Identifying the Financial Flows Connected to Sexual Online Exploitation. In recent years, financial investigation has become an indispensable pillar in cases of online sexual exploitation of children. Financial Action Task Force (FATF) expressly states that understanding financial flows may help link online child sexual exploitation transactions to offenders and victims and may support investigative strategies, reducing dependence on the victim's testimony. The better developed the financial evidence is, the less need there is to "extract" additional details from the child [10, pp. 6, 29].

The FATF report identifies a variety of relevant payment channels: bank transfers, money transfer services, online P2P platforms, PayPal-type services, and gift cards. It also indicates a series of risk indicators, such as uncharacteristic use of P2P accounts, frequent purchases of digital gift cards, repeated transfers of small amounts, and the use of virtual assets to create an additional level of perceived anonymity [10, pp. 14, 44-46].

In cases concerning paid access to files, private groups, livestreams, darknet forums, or P2P ecosystems, the "follow the money" approach must be applied from the beginning of the investigation, not only at its end. This means identifying wallet addresses, screenshots of transactions, confirmation e-mails, installed financial applications, exported CSV files, photographed seed phrases or private keys, and correspondence between payments and files. In many cases, financial data are the bridge linking the digital pseudonym to the physical person [10, pp. 29, 44-46].

Moreover, FATF notes that approaches based on financial intelligence and the interception or detection of payments have led directly to the identification and protection of victims and may reduce the need to obtain additional details by re-interviewing the child. This is one of the strongest justifications for integrating financial analysis into the core of the investigation, rather than placing it at the periphery [10, p. 29].

P2P networks and darknet forums amplify the classic investigative difficulties. In these environments, distribution may be fragmented, decentralised, and sometimes separated from the payment component. A user may share files through one network and receive payment through an entirely different channel, including cryptocurrencies or external P2P systems. For this reason, the investigation must go beyond the linear logic of "account–file–offender" and operate with more complex models: multiple accounts, different platforms, anonymised infrastructures, and indirect payments [10, pp. 14, 44-46]. In practice, useful evidence is often dispersed: a wallet address in a chat, an alias on a forum, the same nickname in a gaming application, a local folder containing payment screenshots, an exported contact list, a note with passwords, or a browser profile preserving cookies and logins. A high-performing computer search must therefore be conceived and executed as a relational search: the investigator looks for connections between sources, not just isolated digital objects [4, Art. 168; 10, pp. 44-46].

II. Recent Normative, Jurisprudential and Doctrinal Landmarks. At the normative level, the centre of gravity of criminalisation in Romanian law is represented by the provisions of the Criminal Code concerning sexual acts with minors, sexual corruption of minors, recruitment of minors for sexual purposes, and child pornography. With regard to Article 374 of the Criminal Code, it should be observed that successive legislative interventions, including those made by Government Emergency Ordinance No.18/2016, have expanded the modes of commission and have emphasised the need for a systemic interpretation of the text in relation to the digital realities of the distribution and making available of unlawful content [5; 32].

At the procedural level, an essential role is played by Article 138 of the Criminal Procedure Code on technical surveillance, Article 148 on undercover investigators, Article 168 on computer searches, Article 111 on the rights and interviewing of the injured person, Article 124 on interviewing the minor witness, and Article 126 on protective measures for threatened witnesses. Together, they create the procedural architecture necessary both for obtaining digital evidence and for protecting the child during the investigation [4].

At European level, Directive 2011/93/EU remains the basic instrument for standardising the criminalisation of sexual abuse of children, sexual exploitation, and child pornography, including the online solicitation of children. In relation to platforms, Regulation (EU) 2022/2065 (DSA) imposes obligations to assess and mitigate risks and strengthens the response framework for illegal content with systemic impact [2; 3].

The current analysis cannot ignore the amendments made to the Criminal Code by Law No.217/2023, which entered into force, in the form relevant to this field, on 1 January 2024 and was subsequently adjusted by Law No.424/2023. The declared purpose of the legislative intervention was to strengthen the protection of minors against sexual abuse, but recent doctrine has noted that the new normative architecture generated difficulties of interpretation and application, including overlaps, debatable solutions for legal classification, and legislative drafting choices regarded as confusing or difficult to apply. In the vicinity of this issue is Law No.171/2023 on the unlawful disclosure of intimate images, useful as a delimiting reference, but distinct from the special regime governing acts involving minors and materials depicting child sexual abuse [26; 27; 28; 29; 30; 31].

The case law of the European Court of Human Rights provides particularly important principles. In K.U. v. Finland, the Court emphasised the State's obligation to ensure a framework enabling the identification of the author of an online-facilitated sexual assault against a minor. In S.N. v. Sweden and B v. Russia, the Court showed, from complementary perspectives, that child protection and the requirements of a fair trial are not incompatible, but the procedure must be designed so as to avoid repeated interviews

and secondary trauma [7; 8; 9].

Article 374 of the Criminal Code still raises difficulties of interpretation, especially in relation to other offences and to new forms of commission in the digital environment. Both the meaning of paragraph (1^1) and the extent to which the expression "making available, in any manner" may also cover situations encountered in metaverse-type virtual spaces (virtual places where content may be displayed, transmitted, exchanged, or made available to others) are debated. These discussions are of practical importance because they influence both the legal classification and the digital evidence that must be identified and analysed [24; 25; 32].

III. Limits of the Study and Proposal for Good Practices. This study primarily uses public normative, doctrinal, jurisprudential, and institutional sources, without relying on specific criminal case files or non-public operational databases. For this reason, the analysis cannot replace the particularities of each investigation and cannot exhaust the technological dynamics of platforms, applications, and anonymisation tools, which change rapidly and require constant updating.

As institutional good practices, at least five directions are necessary: the standardisation of preservation and data disclosure requests addressed to platforms and operators; the development of uniform protocols for post-extraction analysis and for drafting technical reports; the consolidation of child-friendly interview rooms and teams, inspired by the Barnahus model; the early integration of financial analysis in online sexual exploitation cases; and the continuous training of investigators in Open Source Intelligence (OSINT), digital forensics, and the protection of minor victims [10; 21; 22; 23].

Conclusions. The criminalistic investigation of offences directed against children in the online environment can no longer be conceived as a simple digital extension of the classic criminal investigation. It presupposes a paradigm shift in which the object of the inquiry is no longer only the completed act, but also the technical infrastructure, the data trail, the network of accounts, the financial ecosystem, and the mechanisms for protecting the child within the procedure. In these cases, the success of the investigation depends on the ability to build bridges between law and technology: the warrant must be precise, the extraction must be verifiable, the analysis must be intelligible, and the correlation of evidence must go beyond the intuitive level [4; 10].

The difficulty of identifying offenders is structural and will increase as anonymisation, compromised identities, VPN/Tor infrastructures, and platform fragmentation become more accessible. Therefore, an effective investigation should not absolutise either the IP address or the digital profile, but should operate through corroboration: platform data, subscriber data, local artefacts, Open Source Intelligence (OSINT), victim identification, and financial traces [10; 15; 16; 17].

Equally, cases involving minors require a procedure that does not turn protection into trauma. Audio-video recording, early interviewing, avoidance of repeated interviews, specialisation of interviewers, and the use of a victim-based approach grounded in the best interests of the child are not only humanitarian requirements, but also conditions for better evidence. European case law confirms this, and Romanian law already provides an important basis, which must, however, be supported institutionally through specialised rooms, equipment, protocols, and training [4; 8; 9].

Finally, a mature investigation in this field must systematically introduce both the financial component and the rigorous analysis of data after extraction. "Follow the money" and the contextual interpretation of digital artefacts reduce exclusive dependence on the victim's statement, counter simplistic defences concerning accidental access to materials, and allow a more accurate legal classification of the conduct under investigation. The

best investigation of online offences against children is one that manages to be simultaneously technically high-performing, legally robust, and humanly minimally invasive for the child victim [10; 13].

Bibliographical references

1. Directorate for Investigating Organised Crime and Terrorism. Activity Report 2025. Bucharest, 2026. Available: https://www.diicot.ro/images/documents/rapoarte_activitate/raport2025.pdf (Accessed 23 April 2026).
2. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, OJ L 335, 17.12.2011, pp. 1-14.
3. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act).
4. Romanian Code of Criminal Procedure, especially Articles 111, 124, 126, 138, 148, and 168.
5. Romanian Criminal Code, especially Articles 220-222 and Article 374.
6. High Court of Cassation and Justice. Decision No.56 of 18 September 2023 on the settlement of questions of law concerning access to a computer system and computer searches.
7. European Court of Human Rights. K.U. v. Finland, judgment of 2 December 2008.
8. European Court of Human Rights. S.N. v. Sweden, judgment of 2 July 2002.
9. European Court of Human Rights. B v. Russia, judgment of 7 February 2023.
10. Financial Action Task Force. Detecting, Disrupting and Investigating Online Child Sexual Exploitation. Paris, 2025.
11. National Center for Missing & Exploited Children. 2024 Reports by Electronic Service Providers (ESP).
12. National Center for Missing & Exploited Children. CyberTipline Data. Available: https://www.ncmec.org/ (Accessed 23 April 2026).
13. INTERPOL. Victim Identification. Available: https://www.interpol.int/Crimes/Crimes-against-children/Victim-identification (Accessed 23 April 2026).
14. INTERPOL. International Child Sexual Exploitation database. Available: https://www.interpol.int/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database (Accessed 23 April 2026).
15. META. Law Enforcement Guidelines: How Meta works with law enforcement. Available: https://www.meta.com/safety/communities/law/guidelines/ and https://transparency.meta.com/policies/improving/working-with-law-enforcement/ (Accessed 23 April 2026).
16. X. Guidelines for law enforcement. Available: https://help.x.com/en/rules-and-policies/x-law-enforcement-support ([Accessed 23 April 2026).
17. VODAFONE. Government Disclosures Transparency Report 2025. Available: https://www.vodafone.com/~/media/Files/V/vodafone/corp/documents/sustainable-business/law-enforcement/government-disclosures-transparency-report-2025.pdf (Accessed 23 April 2026).
18. Orange Romania. Orange announces the completion of the merger between Orange Romania S.A. and Orange Romania Communications S.A. on 1 June 2024. Available: https://newsroom.orange.ro/comunicate/orange-anunta-finalizarea-fuziunii-dintre-orange-romania-s-a-si-orange-romania-communications-s-a-pe-1-iunie-2024/ (Accessed 23 April 2026).
19. Vodafone Romania. Vodafone Romania completes the acquisition of Telekom Romania Mobile Communications. Available: https://www.vodafone.ro/media/comu-

nicate-de-presa/vodafone-romania-finalizeaza-achizitia-telekom-romania-mobile-communications (Accessed 23 April 2026).
20. EUROPOL. Guidelines for First Responders in Child Sexual Abuse and Exploitation Cases. The Hague, 2022. Available: https://www.europol.europa.eu/cms/sites/default/files/documents/Grace%20Guidelines%202022_Public_0.pdf (Accessed on 23 April 2026).
21. NEWLIN Chris, CORDISCO STEELE Linda, CHAMBERLIN Andra, ANDERSON Jennifer. Child Forensic Interviewing: Best Practices. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., September 2015. Available: https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248749.pdf (Accessed 23 April 2026).
22. Council of Europe. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and explanatory memorandum. Strasbourg, 2011. Available: https://rm.coe.int/16804b2cf3 (Accessed 23 April 2026).
23. Barnahus Network. About Barnahus. Available: https://barnahus.eu/barnahus/about-barnahus/ (Accessed 23 April 2026).
24. Niculescu Bogdan. Some reflections on the offence of child pornography provided for by Article 374 para. (1^1) of the Criminal Code. Revista Pro Lege, Nos. 3-4/2023. Available: https://revistaprolege.ro/unele-reflectii-cu-privire-la-infractiunea-de-pornografie-infantila-prevazuta-de-art-374-alin-1-ind-1-cod-penal-2/ (Accessed 23 April 2026).
25. JURIDICE.ro. The possibility of retaining the offence of child pornography in relation to the new mode of commission introduced by Government Emergency Ordinance No.18/2016 in the metaverse space. A perspective. Available: https://www.juridice.ro/803338/posibilitatea-retinerii-infractiunii-de-pornografie-infantila-in-raport-de-noua-modalitate-de-comitere-introdusa-prin-oug-nr-18-2016-in-spatiul-metaverse-o-perspectiva.html (Accessed 23 April 2026).
26. CIOCLEI Valerian. The bluff or pseudo additional protection of the minor against sexual abuse from the perspective of Law No. 217/2023. AUBD – Forum Juridic, No.2/2024, pp. 142-155. DOI: 10.31178/AUBD-FJ.2024.2.08.
27. IOAN George-Cristian. Offences of rape committed against a minor and sexual assault committed against a minor – "non-critical" comments. Legal classification of acts and determination of criminal sanctions. AUBD – Forum Juridic, No.1/2024, pp. 213-238.
28. ROTARU RADU Cristina. Whom and how do we protect against sexual abuse? Brief references to the amendments to criminal legislation introduced by Law No.217/2023. AUBD – Forum Juridic, No.2/2023, pp. 64-76.
29. UDROIU Mihail. Synthesis of the legislative amendments introduced by Laws No.171/2023, No.213/2023, No.217/2023, and No.248/2023 in the case of offences against the person and offences against property. AUBD – Forum Juridic, No.2/2023, pp. 114-129.
30. Law No.217/2023 amending and supplementing Law No.286/2009 on the Criminal Code, Law No.135/2010 on the Code of Criminal Procedure, and Audiovisual Law No.504/2002. In: Official Gazette No.634 of 11 July 2023, as subsequently amended by Law No.424/2023.
31. Law No.171/2023 amending and supplementing Article 226 of Law No.286/2009 on the Criminal Code. In: Official Gazette No.532 of 15 June 2023.
32. Government Emergency Ordinance No.18/2016 amending and supplementing Law No.286/2009 on the Criminal Code, Law No.135/2010 on the Code of Criminal Procedure, and supplementing Article 31 para. (1) of Law No.304/2004 on judicial organization. In: Official Gazette No.389 of 23 May 2016.

UDC 343.98 (477) **DOI: https://doi.org/10.5281/zenodo.20809927**

ORGANIZATIONAL AND TACTICAL PRINCIPLES OF FORENSIC PROTECTION FOR COMBATING CRIMES AGAINST THE BASIS OF NATIONAL SECURITY

Anastasiia VUIMA,
PhD, Associate Professor,
Department of Criminalistics and Forensic Science,
Educational and Research Institute № 1,
Kharkiv National University of Internal Affairs,
Ukraine
ORCID: 0000-0002-6215-5361

Abstract

The article examines the concept, system, and forensic support for the investigation of crimes against the foundations of Ukraine's national security. It is determined that such crimes are among the most socially dangerous categories of criminal offenses, as they encroach on state sovereignty, territorial integrity, the constitutional order, defense capability, and the state's economic and information security. The classification of crimes against the foundations of Ukraine's national security is analyzed, and the main groups of such encroachments are characterized by their direct object.

Special attention is paid to forensic support for the investigation of these crimes. It is substantiated that forensic support includes a system of forensic knowledge, personnel training, technical and forensic means, tactical techniques, methods, and information and reference resources. It is emphasized that effective investigation of crimes against the foundations of national security is impossible without the use of modern digital technologies, forensic examinations, international cooperation, and proper interagency interaction.

The article also identifies the main problems of forensic support, including: the lack of scientifically sound methods for investigating such crimes, insufficiently developed tactical recommendations, lack of modern technical equipment, difficulty in accessing information located on the territory of the aggressor state, and a high level of resistance to the activities of pre-trial investigation bodies. The conclusion is that there is a need for further development of forensic methods, improvement of technical support, and accumulation of empirical material and judicial practice. It is especially emphasized that Ukraine's experience in this area is of important international importance and can be used by other states to counter modern threats to national security.

Keywords: national security, forensic support, treason, collaborative activities, pre-trial investigation, tactical support, technical and forensic support.

PRINCIPII ORGANIZATORICE ȘI TACTICE ALE ASIGURĂRII CRIMINALISTICE ÎN COMBATEREA INFRACȚIUNILOR ÎMPOTRIVA FUNDAMENTELOR SECURITĂȚII NAȚIONALE

Abstract

Articolul examinează conceptul, sistemul și suportul criminalistic pentru investigarea infracțiunilor împotriva fundamentelor securității naționale a Ucrainei. Se stabilește că astfel de infracțiuni se numără printre cele mai periculoase categorii de fapte penale din punct de vedere social, deoarece aduc atingere suveranității statului, integrității teritoriale, ordinii constituționale, capacității de apărare, precum și securității economice și informaționale a statului. Este analizată clasificarea infracțiunilor împotriva fundamentelor securității naționale a Ucrainei, iar principalele grupuri ale acestor atentate sunt caracterizate în funcție de obiectul lor direct.

O atenție specială este acordată suportului criminalistic pentru investigarea acestor infracțiuni. Se argumentează că suportul criminalistic include un sistem de cunoștințe criminalistice, pregătirea personalului, mijloace tehnico-criminalistice, tehnici tactice, metode, precum și resurse informaționale și de referință. Se subliniază că investigarea eficientă a infracțiunilor împotriva fundamentelor securității naționale este impo-

sibilă fără utilizarea tehnologiilor digitale moderne, a expertizelor criminalistice, a cooperării internaționale și a unei interacțiuni interinstituționale corespunzătoare.

Autorul identifică, de asemenea, principalele probleme ale suportului criminalistic, inclusiv: lipsa unor metode fundamentate științific pentru investigarea acestor infracțiuni, recomandări tactice insuficient dezvoltate, lipsa echipamentelor tehnice moderne, dificultatea accesului la informațiile aflate pe teritoriul statului agresor și nivelul ridicat de rezistență față de activitatea organelor de urmărire penală. Se concluzionează că este necesară dezvoltarea în continuare a metodelor criminalistice, îmbunătățirea suportului tehnic, precum și acumularea de material empiric și practică judiciară. Se subliniază în mod deosebit că experiența Ucrainei în acest domeniu are o importanță internațională majoră și poate fi utilizată de alte state pentru a contracara amenințările moderne la adresa securității naționale.

Cuvinte-cheie: securitate națională, suport criminalistic, trădare de stat, activități colaborationiste, urmărire penală, suport tactic, suport tehnico-criminalistic.

Introduction. The protection of the state's sovereignty and territorial integrity, and the ensuring of its economic and information security, are the basic tasks of any state. National security is defined as the protection of Ukraine's state sovereignty, territorial integrity, democratic constitutional order, and other national interests from real and potential threats. In turn, the national interests of Ukraine are the vital interests of man, society, and the state, the realisation of which ensures the state sovereignty of Ukraine, its progressive democratic development, as well as safe living conditions and the well-being of its citizens [1]. To protect national interests, the state's military formations and law enforcement agencies are involved.

All illegal acts related to encroachments on national interests constitute crimes against the foundations of national security. Crimes against the foundations of national security of Ukraine are socially dangerous, illegal, culpable, and punishable acts that cause harm or create a threat of such harm to the security of the state in the domestic, foreign, military, economic, environmental, and other spheres of the functioning of national security, committed by the subject of the crime [2, p. 20].

The system of crimes that encroach on national security in Ukraine is divided into seven main groups by the direct object (subject of the encroachment). The first group includes crimes against the security of the constitutional order and territorial integrity of the state, namely: actions aimed at forcibly changing or overthrowing the constitutional order or seizing state power (Article 109 Criminal Code of Ukraine), encroachment on the territorial integrity and inviolability of Ukraine (Article 110 CC of Ukraine), financing of actions committed with the aim of changing the boundaries of the territory or state border of Ukraine (Article 110-2 CC of Ukraine), high treason (Article 111 CC of Ukraine), espionage (Article 114 CC of Ukraine), as well as obstruction of the lawful activities of the Armed Forces of Ukraine and other military formations during a special period (Article 114-1 Criminal Code of Ukraine).

The second group consists of crimes against the state's human, economic, defense, and environmental potential. This primarily concerns sabotage (Article 113 Criminal Code of Ukraine), which may consist of committing explosions, arson, and other actions aimed at the mass destruction of people, causing damage to critical infrastructure, defense capabilities, the economy, or the environment. The third group comprises crimes that pose a threat to state security in the information sphere. These include disclosure of state secrets (Article 328 Criminal Code of Ukraine), loss of documents containing state secrets (Article 329 Criminal Code of Ukraine), transfer or collection of information constituting official information collected in the process of operational-search, counterintelligence activities or in the field of national defense (Article 330 Criminal Code of Ukraine), as well as disclosure of information of a military nature or loss of documents containing such

information (Article 422 Criminal Code of Ukraine).

The fourth group comprises crimes that undermine the state's security in the political sphere. Among them: encroachment on the life of a state or public figure (Article 112 CC of Ukraine), interference in the activities of a state figure (Article 344 CC of Ukraine), threat or violence against a state or public figure (Article 346 CC of Ukraine), as well as obstruction of the activities of a people's deputy of Ukraine or a deputy of a local council (Article 351 CC of Ukraine).

The fifth group consists of crimes against the state's external sovereignty. These include attempts on the life of a representative of a foreign state (Article 443 Criminal Code of Ukraine) and crimes against persons and institutions enjoying international protection (Article 444 Criminal Code of Ukraine). The sixth group consists of crimes against the stability of the state's budgetary and financial system, as an important component of economic security. These include the manufacture, storage, purchase, transportation, shipment, import into Ukraine for the purpose of use in the sale of goods, sale of counterfeit money, government securities or state lottery tickets (Article 199 Criminal Code of Ukraine), misuse of budget funds (Article 210 Criminal Code of Ukraine), issuance of regulatory legal acts that reduce budget revenues or increase budget expenditures contrary to the law (Article 211 Criminal Code of Ukraine), evasion of taxes, fees and other mandatory payments (Article 212 Criminal Code of Ukraine), illegal manufacture, counterfeiting, use or sale of excise tax stamps or control stamps (Article 216 Criminal Code of Ukraine), as well as fraud with financial resources (Article 222 Criminal Code of Ukraine).

The seventh group comprises crimes against the fulfillment by citizens of Ukraine of their constitutional duty to protect the state and against the established procedure for performing military service. These include, in particular, evasion of conscription for military service (Article 335 Criminal Code of Ukraine), evasion of conscription during mobilization (Article 336 Criminal Code of Ukraine), evasion of military registration or training (Article 337 Criminal Code of Ukraine), disobedience (Article 402 Criminal Code of Ukraine), failure to comply with an order (Article 403 Criminal Code of Ukraine), resistance to a superior or forcing him to violate his official duties (Article 404 Criminal Code of Ukraine), threat or violence against a superior (Article 405 Criminal Code of Ukraine), violation of the statutory rules of relations between servicemen (Article 406 Criminal Code of Ukraine), unauthorized abandonment of a military unit or place of service (Article 407 Criminal Code of Ukraine), desertion (Article 408 Criminal Code of Ukraine), evasion of military service by self-mutilation or in another way (Article 409 Criminal Code of Ukraine), disclosure of military secrets or loss of documents containing such information (Article 422 Criminal Code of Ukraine), negligent attitude to military service (Article 425 Criminal Code of Ukraine), surrender or abandonment of means of warfare to the enemy (Article 427 Criminal Code of Ukraine), unauthorized abandonment of the battlefield or refusal to use weapons (Article 429 Criminal Code of Ukraine), voluntary surrender into captivity (Article 430 Criminal Code of Ukraine), and criminal actions of a serviceman who is in captivity (Article 431 Criminal Code of Ukraine) [3, p. 10-11].

The systematization of crimes is based on various indicators that differentiate crimes threatening the state's internal and external security. Establishing precise criteria enables us to clearly distinguish crimes against national security from other crimes. The presence of a set of criteria allows crimes against national security to be divided into two types: those that encroach on external and internal security. It is considered necessary to group crimes against the foundations of national security into blocks according to the scope of encroachment [4].

Crimes against the foundations of national security are socially dangerous actions (actions or inactions) committed with the direct content of the subject of the crime and encroaching on state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine; the criteria for classifying crimes against the foundations of national security are the subject of the crime, the object of criminal law protection, the direct object, and the scope of application.

The legislative consolidation of crimes against the foundations of national security in Section I of the Criminal Procedure Code of Ukraine is recognized as appropriate due to their greatest social danger. Scientists express positions that it is possible to group crimes against the foundations of national security in certain blocks, such as crimes related to the intelligence and subversive activities of foreign intelligence agencies; crimes that encroach on the territorial integrity and sovereignty of the state; crimes that encroach on the economic sphere of Ukraine; crimes that encroach on the scientific and technical potential of Ukraine; crimes that encroach on the defense sphere of Ukraine; crimes related to the threat of corruption in state authorities and local self-government bodies; the threat of terrorist use of nuclear facilities on the territory of Ukraine; illegal import of weapons, explosives, ammunition and means of mass use into the territory of Ukraine; attempts to create and operate illegal paramilitary armed formations, etc. [5].

Representatives of the criminal law cycle indicate that the issue of criminal liability for crimes against the foundations of Ukraine's national security requires further, thorough, and detailed scientific research. This requires, among other things, the development and implementation of necessary changes to Ukraine's current criminal legislation. Therefore, it seems appropriate, primarily at the constitutional and legislative levels, to clearly define the objects of national security of Ukraine, since the current Law of Ukraine "On National Security of Ukraine" distinguishes between national and state security and focuses on the control powers of the President of Ukraine, relevant state executive bodies, and local self-government bodies (which overloads the law, since it duplicates the relevant powers contained in the Constitution of Ukraine or special laws, or those of them that could be provided for in them). It also requires the development of individual strategies, in particular the Strategy for National Security of Ukraine and others, and the development, already based on a subordinate regulatory legal act, of the Strategy for Ensuring State Security and other documents. However, there are no norms that clearly define the objects of national security of Ukraine.

In the Law of Ukraine "On the Fundamentals of National Security of Ukraine", which has lost its force, the objects of national security were: constitutional rights and freedoms of man and citizen; society, in particular its spiritual, moral and ethical, cultural, historical, intellectual and material values, information and natural environment and natural resources; as well as the state, its constitutional order, sovereignty, territorial integrity and inviolability. There was a clear definition of the national security of Ukraine. Scientists argue that this law only needs appropriate changes to obtain high-quality regulation at the legislative level of the issue of the fundamentals of national security of Ukraine. Instead, several subordinate regulatory legal acts were adopted, but there is no holistic understanding of Ukraine's national security.

O. Kovalchuk, for example, emphasizes that the legislator, starting from a clearly defined concept of national security of Ukraine and objects of national security of Ukraine at the constitutional and legislative levels, could determine the objects of crimes against the foundations of national security of Ukraine, which today pose a real threat to the national security of Ukraine. Each object of national security of Ukraine must correspond to the

object of a crime in the Criminal Code of Ukraine, for which criminal liability should be established in Section I, dedicated to crimes against the foundations of national security of Ukraine [6].

Crimes against the foundations of Ukraine's national security pose a heightened public danger, as they encroach on the state's sovereignty, territorial integrity, constitutional order, defense capability, economic stability, information security, and the proper functioning of the military sphere. Effective criminal law protection of these values is key to maintaining state stability, the state's ability to counter internal and external threats, and the security of society and its citizens. Therefore, proper regulatory consolidation and systematization of crimes against the foundations of Ukraine's national security are necessary prerequisites for forming an effective mechanism for protecting the most important interests of the state.

Crimes against the foundations of Ukraine's national security constitute one of the most socially dangerous groups of criminal offenses, as they encroach on state sovereignty, territorial integrity, constitutional order, defense capability, economic security, information security, and other components of state security. Their heightened danger stems from the fact that the consequences of such acts can go far beyond harming individuals or damaging public relations and pose real threats to the state's functioning as a whole.

The analysis shows that the system of crimes against the foundations of Ukraine's national security is complex and multi-level. It includes both encroachments on the constitutional order, territorial integrity, and the state's sovereignty, and crimes that harm the state's defense, economic, information, financial, political, and military potential. Therefore, their classification should be carried out by taking into account the subject of the crime, the direct object of the encroachment, the sphere of public relations in which the harm is caused, as well as the focus of the threat - internal or external security of the state.

Of particular importance is the need to further improve legislative regulation in the field of national security protection. Today, there is a need for a clear normative definition of the objects of national security of Ukraine at the constitutional and legislative levels, which, in turn, will allow for a more consistent definition of the objects of criminal law protection and improve the system of crimes against the foundations of national security of Ukraine. It is also important to form a holistic approach to distinguishing between the concepts of national and state security, as well as to bring criminal legislation into line with modern threats associated with terrorism, hybrid aggression, cybercrime, information attacks, illegal arms trafficking, and the activities of illegal paramilitary groups, and even transnational crime, which is also considered by scientists to be a threat to national security [7].

Therefore, effective counteraction to crimes against the foundations of Ukraine's national security is possible only under the condition of a comprehensive combination of criminal law, criminological, organizational, and security measures aimed at protecting key national interests, strengthening statehood, and ensuring the stable functioning of a democratic constitutional system.

Our attention is drawn to the forensic support required for the investigation. Forensic support can be defined as a system of introducing forensic knowledge, recommendations, technical means, methods, and technologies into the practical activities of pre-trial investigation bodies aimed at the effective detection, disclosure, investigation, and prevention of crimes. In a broader sense, it encompasses both a set of scientifically developed means, conditions, and instruments, and the process of their creation, imple-

mentation, and application in specific criminal proceedings.

Forensic support is systemic and comprises several interrelated components.

The first component is forensic knowledge. These are scientific developments in forensics, covering theoretical foundations, patterns of crime mechanisms, methods of trace formation, methods of detection, fixation, extraction, research, and evaluation of evidentiary information. Forensic knowledge serves as the theoretical basis for developing practical recommendations, technical means, and investigative methods.

The second component is forensic education or personnel training. It consists of forming investigators, operational officers, prosecutors, and experts with the knowledge, skills, and abilities to apply forensic methods and techniques. Without proper training, even the most modern recommendations or technical means remain unrealized. That is why forensic education is a prerequisite for the effective functioning of the entire forensic support system.

The third component is technical and forensic support. It covers a system of technical means, scientific and technical devices, special equipment, information technologies, and methods of their application in the investigation process. It includes photographs, videos, audio recordings, methods for detecting traces, expert equipment, digital technologies, software, forensic records, and other tools that ensure the receipt, preservation, and study of evidentiary information.

The fourth component is tactical and forensic support. It consists of the development and application of tactical techniques, combinations, and operations during investigative (search) actions. Tactical support is aimed at overcoming complex investigative situations, minimizing the risk of losing evidence, ensuring effective interaction between investigative and operational units, and ensuring the proper sequence and methods for conducting procedural actions.

The fifth component is methodological and forensic support. It covers a system of specialized recommendations and algorithms for investigating certain types of crimes. Methodological support includes typical versions, investigation programs, the investigator's sequence of actions, the features of working with certain categories of evidence, as well as recommendations on the use of specialized knowledge and international cooperation [8].

Of particular importance is information support, which is sometimes considered an independent component of forensic support. It is an organized system of obtaining, accumulating, processing, storing, and using information necessary for the investigation. These include forensic records, databases, automated information systems, reference resources, international information exchange channels, and other information tools that ensure the effectiveness of the investigation. Thus, forensic support is a multi-level system that combines scientific knowledge, personnel training, technical means, tactical techniques, methodologies, and information resources aimed at the effective resolution of criminal proceedings tasks.

Forensic support for the investigation of crimes against the foundations of national security is a key tool for effective counteraction to such threats. It ensures timely detection, recording, research, and evaluation of evidence, allowing for the exposure of criminal acts that encroach on the sovereignty, territorial integrity, constitutional order, defense capability, economic and information security of the state. The peculiarity of such crimes lies in their high latency, the complexity of the mechanisms of commission, the use of modern technologies, conspiracy, the involvement of foreign entities, and transnational ties. That is why an effective investigation requires the use of specialized foren-

sic methods, digital technologies, forensic examinations, and analytical tools, as well as proper cooperation among law enforcement agencies, special services, and international partners. Without proper forensic support, such crimes may remain unsolved, and the guilty may avoid responsibility, thereby posing a real threat to national security and the stability of the state.

In the field of forensic support for the investigation of crimes against the foundations of national security, there are several serious problems today that concern almost all of its components.

First, the methodological and forensic components are problematic. Today, there are still no sufficiently developed and scientifically substantiated methods for investigating crimes against the foundations of national security, especially those committed in conditions of war, occupation, or hybrid aggression. Recommendations for the analysis of empirical material, primarily judicial practice in cases of treason, collaboration, aiding and abetting an aggressor state, justification of armed aggression, unauthorized dissemination of information about the movement of the Armed Forces of Ukraine, and other crimes of this category, are not sufficiently formed. The relevant practice is still being actively developed; therefore, there are no established approaches to building forensic characteristics, identifying typical investigative situations, presenting versions, and developing investigation algorithms.

Significant difficulties also arise in tactical and forensic support. At present, no clear, universal recommendations have been developed for documenting such crimes, conducting separate investigative (search) actions, conducting simultaneous interrogations, identification, searches, examinations of electronic media, conducting covert investigative (search) actions, etc. The peculiarity of these proceedings is that a significant number of persons who may be witnesses, victims, or suspects are in temporarily occupied territories, in the combat zone, or are traveling abroad. This creates difficulties in identifying them, summoning them, conducting procedural actions, ensuring their appearance, and recording testimony. Also difficult is the problem of documenting the activities of persons who act remotely, use anonymous accounts, VPNs, messengers, or other means to conceal their activities. Among the problems of tactical and forensic support, it is also necessary to separately highlight the high level of counteraction to the activities of pre-trial investigation bodies. In cases of crimes against the foundations of national security, such countermeasures are often organized, systematic, and premeditated. Individuals involved in these crimes may use concealment methods, forged documents, change their location, use closed communication channels, employ encryption, VPN services, and delete or hide digital information.

In addition, counteraction may manifest itself in influencing witnesses, victims, or other participants in criminal proceedings, inducing them to refuse to testify, providing false testimony, concealing physical evidence, creating fictitious alibis, discrediting investigative bodies, or spreading disinformation. The situation is especially dangerous when such counteraction is carried out with the support of foreign special services, illegal armed groups, or organized networks associated with the aggressor state.

In this regard, there is a need to develop special tactical recommendations for overcoming counteraction to the investigation, ensuring the safety of participants in criminal proceedings, rapid documentation of evidence, the use of covert investigative (search) actions, and effective interaction between investigators, operational units, and prosecutors.

No less important are the problems of technical and forensic support. In many cas-

es, law enforcement agencies do not have a sufficient amount of modern equipment and software solutions for copying, storing, decoding, and analyzing digital information. This is especially true for obtaining information from mobile phones, servers, cloud storage, instant messengers, social networks, registries, databases of mobile operators, and Internet providers. There is also a problem of a lack of technical means to restore deleted information, decrypt files, record network activity, and ensure a continuous chain of preservation of digital evidence. The situation is additionally complicated by the rapid development of digital technologies, to which the law enforcement system does not always have time to adapt.

A separate problem remains: information and reference support. In cases of crimes against the foundations of national security, there is often a need to obtain information that is located outside Ukraine or controlled by the aggressor state. This may be data on telephone connections, banking transactions, movement of persons, use of Internet resources, registration of accounts, data on the location of servers, accounts or IP addresses. Obtaining such information is extremely difficult due to the lack of cooperation with the aggressor state, the secrecy of relevant databases, the lack of international mechanisms for quick access to information, or the length of international legal assistance procedures. This significantly complicates establishing the full mechanism of the crime and proving the involvement of specific individuals.

Another problem is the insufficient coordination among investigators, prosecutors, operational units, the Security Service of Ukraine, expert institutions, and international partners. Due to the lack of unified interaction algorithms, important information may be lost, actions may be duplicated, or difficulties may arise in agreeing on an evidentiary strategy.

Thus, the main problems in forensic support are the lack of sufficiently developed methodologies, imperfect tactical recommendations, insufficient modern technical equipment, difficulties accessing information, and insufficient interdepartmental coordination. It is these areas that require the most active scientific and practical development.

Thus, crimes against the foundations of national security of Ukraine are one of the most dangerous categories of criminal offenses, as they encroach on the sovereignty of the state, its territorial integrity, constitutional order, defense capability, economic stability and information security. The peculiarity of such crimes is that their consequences go beyond harm to individuals or public relations and can create a real threat to the existence of the state, the stability of its functioning, and the ability to counteract internal and external challenges.

Conclusions. The conducted research confirms that the system of crimes against the foundations of national security is complex, multi-level in nature and covers various spheres of public relations: political, military, economic, information, financial, environmental and others. In this regard, their classification should be carried out not only according to the formal features of the crime, but also taking into account the direct object of the attack, the nature of the threat, its focus on internal or external security, as well as the peculiarities of the mechanism for committing such acts.

It has been established that effective investigation of crimes against the foundations of national security is impossible without proper forensic support, which includes a system of forensic knowledge, personnel training, technical means, tactical techniques, methods, and information and reference resources. It is forensic support that allows for timely detection, fixation, research, and assessment of evidence, as well as creating conditions for effective interaction between investigators, operational units, prosecutors, ex-

perts and international partners.

At the same time, there are a significant number of problems in the field of forensic support that require scientific understanding and practical solutions. In particular, methodological and forensic approaches to the investigation of crimes against the foundations of national security remain insufficiently developed, especially in conditions of war, occupation and hybrid aggression. There are no established methods for analyzing empirical material and judicial practice, which is only beginning to form regarding such crimes as high treason, collaboration, aiding and abetting an aggressor state, justification of armed aggression, or illegal dissemination of information about the activities of the Armed Forces of Ukraine.

The problems of tactical support also remain significant. No unified recommendations have been developed regarding the documentation of such crimes, interrogations, searches, examinations of electronic media, covert investigative (search) actions, as well as ensuring the participation of witnesses, victims, or suspects who may be in temporarily occupied territories, in the combat zone, or outside Ukraine. An additional challenge is the high level of counteraction to the activities of pre-trial investigation bodies, which is manifested in the concealment of evidence, the use of means of conspiracy, false documents, anonymous accounts, encryption, influencing witnesses, and the spread of disinformation.

An important area of improvement is technical-forensic and information-reference support. Current practice shows the insufficiency of technical means for copying, decrypting, analyzing, and storing digital information, as well as the difficulty of accessing data stored on the territory of the aggressor state or in foreign information systems. This significantly complicates the establishment of the mechanism of the crime, the identification of the persons involved, and proving their guilt.

Therefore, the further development of forensic support for the investigation of crimes against the foundations of national security should be aimed at creating specialized methods, improving tactical recommendations, developing digital technologies, strengthening interdepartmental coordination and international cooperation. Of particular importance is the accumulation and generalization of empirical material and judicial practice, which will allow the formation of more effective algorithms for documenting and proving such crimes [9].

At the same time, Ukraine's experience in the field of investigating crimes against the foundations of national security, as well as the identified gaps in forensic support, are of not only national but also international importance. In the current conditions of increasing hybrid threats, cyberattacks, information operations, terrorism and transnational crime, other states may face similar problems. That is why the Ukrainian experience, including both positive developments and identified shortcomings, can be used by other countries for the timely improvement of their own legislation, investigation methods, technical support and response systems to crimes against the foundations of national security.

Bibliographical references

1. Law of Ukraine on National Security of Ukraine, No.2469-VIII (2018). Available: https://zakon.rada.gov.ua/laws/show/2469-19.
2. Chornyi R.L. (2021). The concept, system, and criminal law characteristics of crimes against the foundations of national security of Ukraine. Doctoral dissertation abstract, Kharkiv National University of Internal Affairs, Ministry of Internal Affairs of Ukraine.

3. Chornyi R.L. (2021). Crimes against the foundations of national security of Ukraine: Criminal law characteristics. Kharkiv: Kharkiv National University of Internal Affairs.
4. Chuvakov O., Balobanova D., Samadova S. & Barbul P. (2022). Conceptual foundations for the systematization of crimes against the basics of national security of Ukraine and some other countries. In: Amazonia Investiga, 11(49), p.86-92. DOI: https://doi.org/10.34069/AI/2022.49.01.10.
5. Yaremko G., Ivanova N., Mandrychenko Z. & Gorpyniuk O. (2021). Conceptual foundations of the systematization of crimes against the bases of national security. In: Amazonia Investiga, 10(47), p.207-215. DOI: https://doi.org/10.34069/AI/2021.47.11.21.
6. Kovalchuk O. (2024). Crimes against the foundations of national security of Ukraine: Concept and system. In: Bulletin of the National University "Lviv Polytechnic", 4, p.95-102. DOI: http://doi.org/10.23939/law2024.44.095
7. Peters J. (2002). Transnational crimes and national security: An overview. In: Nigerian Journal of History & International Studies, 1(1), p.28-44. ISSN 1597-1929.
8. Chornous Y. M. (2012). Theory and practice of forensic support of pre-trial investigation in cases of crimes of an international character. Skif Publishing House.
9. Pohoretskyi M.M. (2026). Criminal offences against the fundamentals of Ukraine's national security under martial law: Problematic issues of forensic support for pre-trial investigation. In: Uzhhorod National University Herald. Series: Law, 5(93), p.156-174. DOI: https://doi.org/10.24144/2307-3322.2026.93.5.21

CZU 343.982.7 **DOI: https://doi.org/10.5281/zenodo.20809735**

THE ROLE OF ARTIFICIAL INTELLIGENCE IN PREVENTING AND COMBATING CRIME: OPPORTUNITIES AND RISKS

Ancuța Elena FRANȚ,
PhD, Associate Professor,
Faculty of Law,
"Alexandru Ioan Cuza" University of Iasi,
Romania
ORCID: 0000-0001-8020-377X

Abstract

This study analyzes the role of artificial intelligence (AI) in preventing and combating crime in contemporary society, focusing on both the opportunities and associated risks. AI-based technologies are increasingly used by authorities to enhance the detection, analysis, and prevention of criminal activities. Applications such as predictive analytics, pattern recognition, biometric identification, and data-driven risk assessment have significantly improved the efficiency and speed of criminal investigations. At the same time, the use of AI raises important legal, ethical, and operational concerns. These include issues related to algorithmic bias, the transparency of decision-making processes, data protection, and the impact on fundamental rights such as privacy and the presumption of innocence. The reliability of AI-generated outcomes and accountability for their use remain central challenges in the integration of these technologies into criminal justice systems.

We argue that, although AI offers significant benefits for crime prevention and control, its implementation must be carefully regulated to ensure compliance with modern legal standards and human rights. A balanced approach is required, one that maximizes technological advantages while minimizing the risks associated with misuse or excessive reliance on AI-based systems. In essence, we consider that the effective use of AI in crime prevention and combating crime depends on achieving a balance between innovation, legal safeguards, and ethical responsibility.

Keywords: artificial intelligence (AI), forensic science, crime prevention, crime control, predictive policing, human rights.

ROLUL INTELIGENȚEI ARTIFICIALE ÎN PREVENIREA ȘI COMBATEREA CRIMINALITĂȚII: OPORTUNITĂȚI ȘI RISCURI

Abstract

Acest studiu analizează rolul inteligenței artificiale (IA) în prevenirea și combaterea criminalității în societatea contemporană, concentrându-se atât pe oportunitățile, cât și pe riscurile asociate acesteia. Tehnologiile bazate pe IA sunt utilizate din ce în ce mai frecvent de autorități pentru a îmbunătăți detectarea, analiza și prevenirea activităților infracționale. Aplicații precum analiza predictivă, recunoașterea tiparelor, identificarea biometrică și evaluarea riscurilor bazată pe date au îmbunătățit semnificativ eficiența și rapiditatea investigării infracțiunilor. În același timp, utilizarea IA ridică probleme importante de natură juridică, etică și operațională. Acestea includ aspecte legate de biasul algoritmic, transparența proceselor decizionale, protecția datelor și impactul asupra drepturilor fundamentale, precum viața privată și prezumția de nevinovăție. Fiabilitatea și responsabilitatea pentru rezultatele generate de IA rămân provocări centrale pentru integrarea acestor tehnologii în sistemele de justiție penală.

Susținem că, deși IA oferă beneficii semnificative pentru prevenirea și combaterea criminalității, implementarea sa trebuie reglementată cu atenție pentru a asigura conformitatea cu standardele juridice moderne și drepturile omului. Este necesară o abordare echilibrată, care să maximizeze avantajele tehnologice, minimizând în același timp riscurile legate de utilizarea necorespunzătoare sau dependența excesivă de sistemele bazate

pe IA. În esență, considerăm că utilizarea eficientă a IA în prevenirea și combaterea criminalității depinde de realizarea unui echilibru între inovație, garanții juridice și responsabilitate etică.

Cuvinte-cheie: inteligență artificială (IA), criminalistică, prevenirea criminalității, combaterea criminalității, poliție predictivă, drepturile omului.

Introduction. The development of Artificial Intelligence (AI) has brought previously unforeseen perspectives for human society. The directions in which AI can evolve are virtually unlimited, encompassing both beneficial and malicious uses. With regard to the commission of criminal offences, AI offers significant opportunities for offenders, who can more easily carry out fraud or cyberattacks, for example by using deepfake technology [1, p. 16]. At the same time, AI also provides enhanced capabilities in the fight against offenders. This paper focuses on the potential use of AI to improve the ways in which crime is prevented and combated. The advantages of using AI for this purpose are readily observable, such as its ability to handle very large volumes of data, which represents a major advantage in combating criminal phenomena. At the same time, however, AI also presents risks which, if not properly managed, may lead to undesirable outcomes [2]. Among the aspects that may be affected by the improper use of AI-based systems are human rights and the fairness of investigative and crime prevention processes, these being essential elements, and jeopardizing them ultimately threatens the foundations of a democratic society. In the following, we will critically analyze not only the opportunities but also the risks associated with the use of AI in crime prevention and combating criminality. Our aim is, essentially, to identify the conditions that must be met in order to use AI responsibly in the field of crime prevention and in forensic science.

Methods and materials applied. In our research approach, we used several methods, namely: the systematic literature review method, the inductive method, the deductive method, the prospective method, and the method of critical comparative analysis. The materials used consist mainly of relevant scientific studies on the use of AI in crime prevention and combating crime, as well as a series of legal acts applicable in the field of AI use. At the same time, we also analyzed several practical examples that illustrate both the opportunities and the risks of using AI in crime control activities. The use of these methods and materials was guided by three research questions: 1) what are the opportunities of using AI in crime prevention and combating crime; 2) what are the risks associated with this approach; 3) how can these risks be mitigated so that the use of AI in crime prevention and combating crime can achieve maximum efficiency. In this way, we developed a paper that is mainly theoretical in nature but grounded in factual reality, which provides validation for the conclusions drawn.

Discussions and results obtained. AI has begun to be used in a wide variety of fields, as people have become aware of the major advantages that this technology can bring. In practice, AI can be used both in everyday life and in highly specialized activities. AI offers new ways for people to communicate, analyze data, make decisions, and it is redefining the way people work [3]. Moreover, the ability of AI to analyze large volumes of data allows for improved performance in areas considered "classical" in forensic science, for example in the detection of simulated behaviour [30].

The development of AI began earlier than one might think, as the literature shows that in 1947 Alan Turing introduced the concept of what we now call AI, which he believed could develop through progress in computer programming [5]. The term "artificial intelligence" itself was introduced in 1956 by John McCarthy [3].

Before beginning the analysis of how AI can be used for crime prevention and control,

we consider it necessary to understand what AI actually means. Although there are several interpretations of this term [3], in essence, AI refers to the existence within machines of cognitive abilities specific to living beings [6]. The field of AI is highly complex and also relates to deeply human aspects such as psychology and philosophy. It is sufficient to consider the fact that AI leads us to ask what knowledge is and how it can be used, in order to understand the implications of AI in areas that, at first glance, appear to concern exclusively the analysis of human behaviour [6].

In the field of forensic science, specialists have recognized that AI can bring significant improvements to investigative activities, due to the remarkable characteristics of this technology [4]. It should be emphasized that forensic science is, essentially, an interdisciplinary field in continuous development, which has consistently adopted innovations from other sciences in order to enhance its specific investigative activities. It was therefore only natural that AI technology would be rapidly adapted for use in forensic science.

The usefulness of AI in crime prevention and combating crime derives from a range of its capabilities, such as the ability to collect and analyze large volumes of data, pattern recognition, and the very short time required to perform various types of analysis. These capabilities enable highly useful operations in crime prevention or forensic investigations, such as predictive analytics, biometric recognition and identification, ensuring the integrity of the chain of custody, detecting details that would be impossible for humans to observe, developing strategies for responding to hacking incidents, and reconstructing the timeline of cybercrimes. The use of AI in such activities allows for the anticipation of how and when offenders may act and provides significant advantages in identifying perpetrators.

At the same time, however, the use of AI for the purposes described above entails a number of risks, such as the risk of error, risks related to the opaque nature of AI systems, ethical risks, and risks concerning human rights (such as the right to privacy or the presumption of innocence).

In the following, we will provide a detailed analysis of the opportunities and associated risks present in some of the most important uses of AI in crime prevention and combating crime.

The ability of AI to collect and analyze large volumes of data enables the examination of extensive information sets in order to prevent the commission of crimes. Specifically, algorithms can analyze information derived, for example, from police reports regarding the frequency of crimes in certain areas, social media posts, geographical data, etc., in order to correlate certain events or individuals between which, at first glance, no connection appears to exist, or to identify areas or time periods in which there is an increased risk of criminal activity. In this way, criminal behaviour can essentially be anticipated, allowing for the allocation of necessary resources so that law enforcement authorities can intervene in time to prevent crimes [7].

Theoretically, such a system could function effectively in relation to offences that involve repetitive patterns or observable behaviours that generate data. This category may include street crime, such as pickpocketing or theft from vehicles, street violence, and public disorder. In such cases, AI can highlight high-risk areas, days, and time intervals, generating veritable crime maps that can be highly detailed and updated in real time. This information can be used to organize preventive patrols by law enforcement agencies in those places and at those times where the risk of criminal activity is high [8]. Other types of offences for which these AI capabilities may be effective include those committed

by organized crime, such as drug trafficking, human trafficking, and smuggling. In such cases, AI can assist in revealing hidden connections between members of organized criminal structures, for example through the monitoring of social networks [9, p. 17-18]. Cybercrime is an area in which AI can deliver particularly strong results in prevention and control, as both AI and offenders operate with natively digital data. In such cases, AI can identify attack patterns, network traffic anomalies, or suspicious behaviours, contributing significantly to countering phishing operations, ransomware, hacking, or other similar activities [10]. Another category of offences in which AI can produce important results in prevention and control is economic and financial crime, such as tax evasion, credit card fraud, insurance fraud, money laundering, etc. Specifically, AI is frequently used to detect behaviours that deviate from normal patterns, such as unusual banking transactions by a user [11].

Another benefit brought by AI, in the context of the large volume of data that must be analyzed, is the automation of repetitive processes. AI can perform preliminary checks, classify data into relevant categories, and filter data by removing information that is not relevant to a case. In this way, judicial authorities can focus their attention on activities that require the exclusive intervention of the human factor, and overall, the efficiency and speed of investigations are increased [14; 31].

However, the obvious advantages brought by AI in performing the activities mentioned above are accompanied by major risks concerning several aspects. It is important to be aware of these risks and to take them into account when assessing the outputs provided by AI, in order to effectively benefit from the opportunities offered by this technology.

The large-scale storage of data may lead to violations of the right to privacy, as guaranteed by Article 8 of the European Convention on Human Rights (ECHR). This outcome may occur if AI stores and processes data without respecting the principles of necessity and proportionality. The use of AI requires significant volumes of data in order to identify relevant patterns, and in order to fulfil its purpose, the collection of necessary information must be allowed. However, the fact that the effective functioning of AI requires very large amounts of data does not justify the indiscriminate storage and processing of data relating to all individuals. In such a scenario, it would lead to forms of mass surveillance, which is incompatible with European standards on the protection of fundamental rights [15; 16].

With regard to the data that may be stored, some are highly sensitive, such as biometric data or information concerning an individual's behaviour over time, including criminal records. The storage and indiscriminate processing of such data may lead to the permanent monitoring of individuals and their activities, which would amount to continuous mass surveillance of individuals. Moreover, the use of such data may result in behavioural profiling, which could infringe upon the presumption of innocence [17].

Data storage also entails the risk of being used for purposes other than the original one. For example, if certain information is lawfully stored for a legitimate purpose, such as crime prevention, in the absence of adequate safeguards, such data could be used for other purposes without an appropriate legal framework or without the consent of the data subject. For instance, a person's genetic data could be used for identifying an individual based on familial DNA, without that person having consented to this extended use of their genetic information [18].

Databases also represent a preferred target for cyberattacks, which means that significant data breaches may occur if appropriate protective measures are not

implemented. In practice, there is a risk that sensitive information about individuals may become public or be made available to criminal organizations. There is also the risk that information may be misused even by those responsible for protecting personal data, for example for purposes of blackmail.

Another risk associated with AI's ability to operate with large databases lies in the creation of an illusion of correctness of the generated conclusions. Because it is known that AI uses large volumes of data, there may be a perception that the outputs are objective and based on scientific grounds. In reality, however, the data may not be of high quality, may be unbalanced across different categories of individuals, geographical areas, or types of behaviour, and may reflect previous human decisions (for example, the decision to monitor a certain area more intensively may lead to the conclusion that more crimes are committed there) [2].

The ability to identify patterns through the analysis of large volumes of data represents one of the most important functions that AI can perform in crime prevention and combating criminality. As shown above, AI can simultaneously analyse data relating to different aspects (geographical, digital, temporal data, as well as data from police reports), making correlations that are difficult or even impossible for a human observer to establish [19]. For example, the analysis of communication and interaction patterns between different individuals may reveal a structure of organised crime and the roles that individuals play within such a network (whether they are leaders or occupy lower positions in the hierarchy). Thus, AI provides an in-depth understanding of the dynamics of criminal phenomena, enabling appropriate actions by authorities responsible for preventing and combating crime.

An essential outcome deriving from AI's capacity to identify patterns is that it enables a shift from reactive to preventive approaches to criminality. This means that preventive measures can be taken, as crime can be anticipated, allowing intervention before offenders carry out their intentions. This is the basis of predictive policing, which relies on data analysis to identify risks and intervene before crimes occur [7]. In this way, a form of *a priori* crime prevention is developed, prior to the commission of offences, which offers effective protection for society. Of course, there is also a preventive dimension arising from actions taken by authorities after a crime has been committed, through the sanctioning of offenders, thereby warning those who might consider committing similar acts. However, this *a posteriori* prevention implies that social order has already been harmed, and the negative consequences of the offence cannot be entirely eliminated.

The ability of AI to identify patterns allows for the optimisation of resource allocation in crime prevention activities [7]. In practice, high-risk elements can be prioritised, which means, for example, that police patrols can be efficiently deployed, thereby reducing unnecessary interventions. In this way, operational efficiency increases, while overall costs of crime prevention efforts are reduced. Optimisation also occurs in situations where an offence has already been committed, as the existence of prior data regarding the area or other circumstances related to the commission of the act allows for a faster response by judicial authorities and increases the likelihood of identifying offenders.

The effectiveness of AI in pattern recognition provides substantial support in the actual investigative process following the commission of an offence. Advantages may arise, for instance, from the fact that AI can establish correlations between seemingly unrelated pieces of evidence, which would be difficult for a human analyst to detect, especially when dealing with large volumes of information [2]. In this way, it becomes possible to identify the sequence of events related to the commission of the act and to reconstruct

the chronology of the offence. Consequently, the time required to resolve a case is reduced, and the likelihood of achieving accurate results regarding the identification and sanctioning of offenders increases.

Anomaly detection is another outcome that AI can achieve, deriving from its ability to identify patterns. By highlighting deviations from normal behaviour, indicators of criminal activity can be revealed. Such anomalies may include, for example, unusual financial transactions by individuals, suspicious behaviour in the digital environment, or any other activities that do not fit established patterns. This capability of AI is highly useful for the prevention and combating of certain categories of offences, such as fraud, cybercrime, or financial crime [19; 20].

The identification of patterns by AI also presents a number of risks. One of these risks is algorithmic bias, which can lead to discrimination. The accuracy of the outcomes obtained in pattern recognition depends heavily on how the databases are constructed. If the stored information is incomplete, distorted, or disproportionately represents certain categories of individuals, activities, etc., then the outputs generated by AI will, in practice, reflect the imbalances present in the underlying data [21]. For example, if a district of a city is more closely monitored than others, more data will be collected about that area, which may indicate that more crimes are committed there. This may lead to the conclusion that the area has a higher crime risk than other areas; in reality, however, other areas may also have a high level of risk, but no sufficient data is available for them.

An important aspect to emphasize regarding how AI identifies and analyses patterns is that this technology highlights correlations between data, rather than establishing causal relationships. Interpreting AI-generated outputs as evidence of causation may lead to the erroneous conclusion that certain patterns are predictive, in the sense that they generate a high probability of a specific outcome [22]. In this way, incorrect decisions may be made on the basis of weak statistical foundations. For example, if data show that an individual, during childhood, was involved in several conflicts with school peers, this information may be interpreted as indicating a predisposition toward violent behaviour; however, in the absence of any subsequent violent conduct, such a correlation does not support the conclusion that the individual would have a high likelihood of committing violent offences in adulthood, especially if, after childhood, that person has no history of violent acts. Such a conclusion would indicate a misuse of data and could lead to findings that are not supported by a sound statistical basis.

The identification of certain behavioural patterns in individuals may lead to labelling and stigmatization of persons and, from a legal perspective, may even result in the violation of the presumption of innocence and equality before the law [16; 17]. Such consequences may arise in situations where AI highlights that certain individuals present a high risk of committing offences (for example, if the person has previously committed several offences). These individuals may be subject to increased monitoring (thereby infringing the right to privacy) and may be regarded as suspects from the very beginning of an investigation, even if, at least at that stage, there is no evidence supporting such a hypothesis.

The aspects outlined above indicate that, in essence, the algorithms underlying AI systems may incorrectly identify certain individuals as presenting a heightened risk of being perpetrators of criminal acts, thereby generating unjustified actions by judicial authorities against these persons. In this way, criminal justice would be seriously affected in its very core element, namely the establishment of the truth.

The speed at which AI processes data, far exceeding the capabilities of a human

analyst, represents one of the greatest advantages brought by this technology. This feature directly influences the efficiency of crime prevention and forensic investigations. For example, an AI fingerprint analysis system can verify millions of fingerprints within seconds or minutes. The specialized literature highlights that human analysis of relatively small fingerprint datasets would require days or weeks [13]. By extrapolation, it can be concluded that, in the case of databases containing millions of records, an analysis performed exclusively by a human analyst would take months or even years.

The high speed of information processing significantly reduces the time required to identify patterns and establish relevant correlations, both in crime prevention and investigative activities. In terms of prevention, the rapidity of AI technology enables real-time action by competent authorities, which can prevent the commission of offences or at least limit their effects [21]. For instance, AI can detect suspicious behaviour of individuals in public spaces in real time, instantly flag fraudulent financial transactions, or identify ongoing cyberattacks. Regarding investigative activities, AI can quickly establish connections between pieces of evidence and reduce the time needed to reconstruct the chronology of an offence and identify perpetrators. In this way, the efficiency of judicial authorities' activities is increased, and the duration of case resolution is reduced.

Another effect of AI's speed of analysis is the ability to detect changes in patterns of criminal behaviour, particularly in relation to cybercrime [19]. In practice, new modes of operation can be identified in a timely manner, which allows for the adoption of preventive strategies in response to emerging criminal patterns.

Moreover, the high speed at which AI operates contributes to reducing delays in decision-making in a given situation [21]. This supports the adoption of effective operational decisions, reducing response time, which is particularly crucial in critical situations requiring urgent action.

However, the high speed of information analysis also presents a number of risks. The rapid processing of data may lead to the accelerated propagation of errors (for example, the misidentification of a person as a potential offender). At the same time, correcting such errors becomes difficult once they have already been incorporated into the information flow processed by AI [23]. In addition, the fact that AI produces conclusions and predictions in very short timeframes may create pressure on law enforcement authorities, pushing them to act as quickly as possible. If AI-generated information is not properly validated, this may result in unjustified interventions (for example, traffic stops or searches). Furthermore, the continuous flow of information generated by AI may desensitize human operators, who may begin to ignore certain alerts, some of which could be highly important [24; 25].

The way AI operates, particularly technologies characterized by opacity (generically referred to as "black box" systems), represents one of the sources of AI's advantages, but at the same time generates a distinct category of risks.

Complex technologies used in AI systems that exhibit varying degrees of opacity, such as those based on deep learning, enable high performance in certain tasks, for example in pattern recognition, often surpassing the accuracy of explainable AI models. These results can be highly useful in essential forensic activities such as facial recognition, fingerprint identification, or the detection of criminal patterns [24; 27; 32].

At the same time, opaque systems enable the combined processing of different types of information (for example video, audio, and text data) [28]. In this way, subtle correlations between data can be uncovered, allowing for the development of a more complex understanding of criminal phenomena.

Also, the opacity of these technologies makes them more difficult to detect by potential offenders, which facilitates the collection of relevant data, for example in the case of crimes committed in the online environment [29].

Thus, there are a number of advantages that stem precisely from the opacity of the way AI operates. At the same time, however, this opacity also generates risks.

One of the most significant risks arises from the lack of transparency in the reasoning applied by opaque AI systems to reach a particular outcome. Specifically, this means that the way in which this type of AI generates a conclusion cannot be clearly understood by humans. Even if there is a logical process that led to a given result, this process often cannot be traced by humans for several reasons. For example, it may not be possible to determine which variables had the greatest influence, or to verify whether erroneous data or bias were involved. The difficulty in understanding how such systems function becomes evident when considering that some AI models are extremely complex, having millions or even billions of parameters, while the relationships between variables are non-linear (effects are not proportional or predictable) and interdependent (variables influence each other) [24; 26].

This difficulty in understanding how AI operates leads to the impossibility of clearly justifying the adoption of certain measures (for example, pre-trial detention) or decisions (for example, a conviction), especially when AI has played a decisive role in the decision-making process. Consequently, the individual directly affected cannot effectively challenge the measure or decision, being unable to demonstrate the existence of errors in the AI's reasoning. In this way, the transparency of judicial acts would be undermined, affecting several fundamental rights, such as the right to a fair trial (guaranteed overall by Article 6 ECHR), the presumption of innocence (Article 6(2) ECHR), the right not to be discriminated against (Article 14 ECHR), and the right to liberty and security (Article 5 ECHR).

Another risk lies in the potential reduction of critical analysis by human operators, who may develop excessive trust in AI-generated outputs, especially if, in previous similar cases, those outputs were confirmed by practical findings. At the same time, the opacity of AI makes it difficult to detect errors, bias, imbalances in datasets, or the existence of discrimination [24].

Reducing the risks associated with the use of AI is a priority in the context of ongoing debates surrounding this technology. As long as these risks persist, the benefits of AI cannot be fully realized. Measures that may be adopted for this purpose include ensuring the transparency of how AI systems operate, guaranteeing the quality and security of the data used, and establishing an appropriate legal framework that also includes rules on liability for damages caused by the use of AI.

Within the efforts aimed at mitigating the risks associated with AI, we consider that a particularly important role is played by the *European Union Regulation on Artificial Intelligence* (*Artificial Intelligence* Act), which entered into force on 1 August 2024 [33]. This instrument classifies AI applications according to their risk of causing harm into four categories: unacceptable risk, for which AI uses are prohibited (with limited, explicitly provided exceptions); high risk, which requires compliance with security, transparency, and quality requirements; limited risk, which entails only transparency obligations; and minimal risk, which is not subject to regulation. In addition to these categories, a separate category is provided for general-purpose AI systems, which must comply with transparency rules.

With regard to applications falling within the unacceptable risk category, this includes: systems that manipulate human behaviour in a way that affects an individual's

decision-making autonomy; systems that use real-time remote biometric identification in public spaces (such as facial recognition); and "social scoring" systems, through which individuals are evaluated and classified based on personal characteristics, socio-economic status, or behaviour. Exceptions, which nonetheless allow the use of AI applications within this category, concern cases where AI systems are used exclusively for military, defence, or national security purposes, as well as cases where AI systems are developed and used solely for scientific research and development purposes [33].

Conclusions. The use of AI in crime prevention and combating crime marks a significant transformation in the way authorities carry out their activities, generating both substantial opportunities and important risks. The analysis conducted highlights that the advantages of AI derive mainly from its ability to process very large volumes of data, identify complex patterns, and operate at a speed that is difficult to achieve through traditional means.

A major opportunity lies in the possibility of shifting from a reactive approach to a preventive one. Through the use of methods such as predictive analytics and anomaly detection, AI enables the anticipation of criminal behaviour and the adoption of preventive measures before offences are actually committed. This effect represents a genuine paradigm shift, contributing to an increased level of societal protection and to the enhancement of the efficiency of law enforcement activities. At the same time, the ability to identify patterns facilitates investigative work, allowing for the rapid correlation of seemingly disparate pieces of information and the reconstruction of the chronology of events within a short timeframe.

Other major opportunities arise from the speed and automation of processes. AI can perform preliminary checks, filter out irrelevant information, and classify data, significantly reducing the workload of human operators. This increased efficiency allows resources to be allocated to activities that require exclusively human judgment and contributes to the acceleration of case resolution. In addition, complex AI models, particularly those characterized by a certain degree of opacity, can achieve high levels of accuracy, especially in areas such as facial recognition or fingerprint identification.

However, the same characteristics that generate advantages may also constitute sources of risk. First, the reliance on large volumes of data raises concerns regarding the protection of privacy and the observance of the principles of necessity and proportionality. The indiscriminate storage and analysis of data may lead to forms of mass surveillance that are incompatible with European standards on fundamental rights. Moreover, if the data used are incomplete, unbalanced, or influenced by prior decisions, they may produce distorted outcomes, generating risks of discrimination and algorithmic bias.

Another sensitive issue concerns the opacity of certain AI systems. Although opacity is often associated with high performance, the inability to explain AI-generated outcomes affects transparency and the possibility of control. In a judicial context, this may have direct consequences for the right to a fair trial, including the presumption of innocence, as affected individuals may face difficulties in challenging algorithmic conclusions. Furthermore, there is a risk of excessive reliance on automated systems, which may lead to a diminished role of the human factor in the decision-making process.

The speed of data processing, while beneficial, may amplify errors and create pressure to adopt rapid decisions, sometimes insufficiently verified. In addition, the continuous flow of information may lead to the desensitization of human operators and to the overlooking of relevant signals. Last but not least, the use of AI raises issues of legal accountability, particularly in situations where decisions are influenced by opaque

systems that are difficult to audit.

Reducing these risks requires the adoption of a coherent set of technical, organizational, and legal measures. From a technical perspective, it is necessary to develop transparent and explainable systems, as well as to improve the quality and security of the data used. At the operational level, maintaining effective human oversight over relevant decisions is essential, so that AI functions as a support tool rather than an autonomous decision-maker, especially in sensitive areas. Additionally, periodic testing of systems can contribute to identifying and correcting bias or errors.

From a legal perspective, legislation plays a key role in limiting the risks associated with the use of AI. At the European Union level, the *Artificial Intelligence Regulation* (*AI Act*) establishes a risk-based approach, prohibiting certain applications considered unacceptable and imposing strict requirements on high-risk systems. It is complemented by other relevant legal instruments, such as the *European Convention on Human Rights*, contributing to ensuring a balance between technological innovation and the protection of fundamental rights.

In conclusion, AI offers valuable opportunities for the prevention and combating of criminal activity, but its use must take place within a rigorously regulated framework. It is necessary to maintain a balance between harnessing technological potential and safeguarding fundamental rights, by ensuring transparency, human oversight, and accountability in the use of these systems. Only under these conditions can AI sustainably contribute to strengthening the efficiency and legitimacy of crime prevention and enforcement mechanisms.

Bibliographical references

1. Maio A. Artificial Intelligence and Crime: The Dual Role of AI in Criminal Activity and Crime Prevention. Publishing House: Zenodo, 2025. 76p. Available: https://doi.org/10.5281/zenodo.16945903.
2. Syifaurachman S. Opportunities and Challenges of Artificial Intelligence in Digital Forensics. In: "International Journal Software Engineering and Computer Science (IJSECS) 5", 2025, p.56-75. Available: https://doi.org/10.35870/ijsecs.v5i2.4371.
3. Sharma S. Benefits or concerns of AI: A multistakeholder responsibility. In: "Futures", 2024, vol. 157, 103328. Available: https://doi.org/10.1016/j.futures.2024.103328.
4. Predescu S. Reconstrucţia tridimensională a locului faptei / Three-Dimensional Reconstruction of the Crime Scene. In: "Analele Universității de Vest din Timișoara - Seria Drept" / "Annals of the West University of Timișoara - Law Series", 2025, no. 1, p. 41-46. Available: https://drept.uvt.ro/administrare/files/1756738341-articol-silviu-predescu.pdf (Accessed 4 April 2026).
5. Mccarthy J. From here to human-level AI. In: "Artificial Intelligence", 2007, vol. 171 (18). Available: https://10.1016/j.artint.2007.10.009.
6. Schank R.C., Abelson R.P. Scripts, plans, goals, and understanding: An inquiry into human knowledge structures. Psychology Press – Taylor and Francis Group, 1977. 256 p.
7. Raji I., Sholademi D. Predictive Policing: The Role of AI in Crime Prevention. In: "International Journal of Computer Applications Technology and Research", 2024, vol. 13, p. 66-78. Available: https://doi.org/10.7753/IJCATR1310.1006 .
8. AI to help police catch criminals before they strike. Available: https://www.gov.uk/government/news/ai-to-help-police-catch-criminals-before-they-strike (Accessed 5 April 2026).
9. EUROPOL. The Second Quantum Revolution – The impact of quantum computing and

quantum technologies on law enforcement, Europol Innovation Lab observatory report. Luxembourg: Publications Office of the European Union, 2023.
10. Godwin S. Investigation and prevention of cyber-crimes using Artificial Intelligence, Jyväskylä. Jamk University of Applied Sciences, 2025. Available: https://www.theseus.fi/bitstream/handle/10024/891045/Stephen_Godwin.pdf?sequence=2 (Accessed 7 April 2026).
11. Uddin N. Role of AI in Preventing Financial Crime: A Comprehensive Analytical Review. In: "Journal of Economic Criminology", 2025. Available: https://doi.org/10.1016/j.jeconc.2025.100200.
12. Egbert S. Predictive Policing and the Platformization of Police Work. In "Surveillance & Society", 2019, vol. 17, p. 83-88.
13. Herke C. Automated Fingerprint Identification: The Role of Artificial Intelligence in Crime Scene Investigation. In: "Forensic Sciences", 2026, vol. 6 (1), 6. Available: https://doi.org/10.3390/forensicsci6010006.
14. Babashahi L., ș.a. AI in the Workplace: A Systematic Review of Skill Transformation in the Industry. In: "Administrative Sciences", 2024, vol. 14 (6).
15. Ureche B.A., Inteligența artificială în cercetarea locului faptei: Garantarea drepturilor omului în era tehnologiei / Artificial Intelligence in Crime Scene Investigation: Safeguarding Human Rights in the Technological Era. In: coord. Gârleșteanu G. L., Protecția Drepturilor Omului în Dreptul Public și Dreptul Privat. Studii Doctorale / Protection of Human Rights in Public Law and Private Law: Doctoral Studies, vol. VII. Craiova: Universitaria Publishing House, 2025, p. 251-258.
16. Juliussen B.A. Monitoring, governmental data access and the invocation of Article 8 ECHR by legal persons. In: "The International Journal of Human Rights", 2025, vol. 29 (7), p. 1249-1271.
17. Moroșteș A. Artificial Intelligence in Forensic Investigations. Doctrinal Gaps, Fundamental Rights and the Rule of Law. In "Journal of Legal Studies", 2025, 36, p. 164-175. Available: https://doi.org/10.2478/jles-2025-0019.
18. Mateen R.M., ș.a. Familial DNA analysis and criminal investigation: Usage, downsides and privacy concerns. In: "Forensic Science International", 2021, 318 p., 110576. Available: https://doi.org/10.1016/j.forsciint.2020.110576.
19. Ndibe S. AI-Driven Forensic Systems for Real-Time Anomaly Detection and Threat Mitigation in Cybersecurity Infrastructures. In: "International Journal of Research Publication and Reviews", 2025, 6. Available: https://doi.org/10.55248/gengpi.6.0525.1991.
20. Alaka E., ș.a. The Integration of Artificial Intelligence in Forensic Auditing and its Implications for Real-Time Fraud Detection in Global Financial Institutions. In: "International Journal of Innovative Science and Research Technology (IJISRT)", 2025, p. 1688–1707. Available: https://doi.org/10.38124/ijisrt/25sep1334.
21. Dunsin D. ș.a. A Comprehensive Analysis of the Role of Artificial Intelligence and Machine Learning in Modern Digital Forensics and Incident Response, In: "Forensic Science International: Digital Investigation", 2024, 48, 301675. Available: https://doi.org/10.1016/j.fsidi.2023.301675.
22. Durán J.M., ș.a. From understanding to justifying: Computational reliabilism for AI-based forensic evidence evaluation. In: "Forensic Science International: Synergy", 2024, 9, 100554. Available: https://doi.org/10.1016/j.fsisyn.2024.100554.
23. Amodei D., ș.a. Concrete Problems in AI Safety, 2016. Available: https://doi.org/10.48550/arXiv.1606.06565.
24. European Crime Prevention Network (EUCPN). Artificial intelligence and predictive

policing: risks and challenges. Available: https://eucpn.org/sites/default/files/document/files/PP%20%282%29.pdf (Accessed 7 April 2026).
25. Hefetz I. Evaluating bias in forensic evidence: From expert analysis to AI-based decision tools. In: "Forensic Science International: Synergy", 2025, 11, 100645. Available: https://doi.org/10.1016/j.fsisyn.2025.100645.
26. Hassija V., ș.a. Interpreting Black-Box Models: A Review on Explainable Artificial Intelligence. In: "Cognitive Computation", 2024, vol. 16, p.45-74. Available: https://doi.org/10.1007/s12559-023-10179-8.
27. Rudin C. Stop explaining black box machine learning models for high stakes decisions and use interpretable models instead. In: "Nature Machine Intelligence", 2019, 1, p.206-215. Available: https://doi.org/10.1038/s42256-019-0048-x.
28. Baltrušaitis T., Ahuja C., Morency L.-P. Multimodal Machine Learning: A Survey and Taxonomy, 2017. Available: https://doi.org/10.48550/arXiv.1705.09406.
29. Brundage M., ș.a. The Malicious Use of Artificial Intelligence: Forecasting, Prevention, and Mitigation, 2018. Available: https://doi.org/10.48550/arXiv.1802.07228.
30. Dumitrașcu I.D. Provocări ale utilizării Inteligentei Artificiale în detectarea minciunii / Challenges of Using Artificial Intelligence in Lie Detection. In: coord. Gârleșteanu G. L., Protecția Drepturilor Omului în Dreptul Public și Dreptul Privat. Studii Doctorale / Protection of Human Rights in Public Law and Private Law: Doctoral Studies, vol. VII. Craiova: Universitaria Publishing House, 2025, p.120-131.
31. Paraschiv C.S. Advantages of Using AI in the Criminal Prosecution Phase for Digital Evidence Analysis. In: "RAIS Conference Proceedings", June 5-6, 2025. Available: https://doi.org/10.5281/ZENODO.16218052.
32. Predescu S. Impactul Deep Learning în identificarea criminalistică. Limite, avantaje, implicații etice / The Impact of Deep Learning on Forensic Identification: Limitations, Advantages, and Ethical Implications. In: coord. Gârleșteanu G. L., Protecția Drepturilor Omului în Dreptul Public și Dreptul Privat. Studii Doctorale / Protection of Human Rights in Public Law and Private Law: Doctoral Studies, vol. VII. Craiova: Universitaria Publishing House, 2025.
33. Artificial Intelligence Act. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689 (Accessed 7 April 2026).

CZU 342.7 DOI: https://doi.org/10.5281/zenodo.20810062

THE NOTION AND ESSENCE OF THE RIGHT TO PRIVACY

Daniel CRISTEA,
PhD, Chief Police Commissioner,
Criminal Investigation Office, Buzau County Police Inspectorate,
Romania
ORCID: 0000-0002-5786-2619

Ștefan MUNTEANU,
Officer, European Border and Coast Guard Agency, FRONTEX,
Romania
ORCID: 0009-0000-8017-5107

Abstract
The right to privacy is part of and is included in the category of fundamental rights. However, globalist transformations have emphasized the respect for the right to privacy, precisely as a necessary component in a changing society, in such a way as to impose in a state of law, in a society in full transformation, a control that guarantees this protection in balance with the interest of the state. Its polymorphic and evolutionary character necessarily highlights, within the evidentiary procedures, a balance between the protection of privacy and the legitimate interests of the state, achieved in this sense by applying the proportionality test.
In this sense, in order to respect the right, the institutions have provided as tasks, the analysis of the application method, including within the evidentiary procedures for the application of criminal law, of all actions carried out in return for the right to privacy. The notion and essence of the right to privacy precisely presents the role held within the evidentiary procedures in order to understand, protect and respect it.
Keywords: right to privacy, notion, protection, analysis, criminal procedures.

NOȚIUNEA ȘI ESENȚA DREPTULUI LA VIAȚA PRIVATĂ

Abstract
Dreptul la viața privată face parte și este inclus în categoria drepturilor fundamentale. Transformările globaliste însă au pus accent pe respectarea dreptului la viața privată, tocmai ca o componentă necesară într-o societate în schimbare, în așa mod în care să impună într-un stat de drept, într-o societate în plină transformare, un control, care să garanteze acestă protecție în echilibrul cu interesul statului. Caracterul său poliform și evolutiv evidențiază obligatoriu, în cadrul procedeelor probatorii, un echilibru însă între protecția vieții private și interesele legitime ale statului, realizat în acest sens prin aplicarea testului proporționalității.
În acest sens, pentru respectarea dreptului, instituțiile au prevăzut ca și sarcini, analiza modului de aplicare, inclusiv în cadrul procedeelor probatorii de aplicare a legii penale, a tuturor acțiunilor desfășurate în contrapartidă cu dreptul la viața privată. Noțiunea și esența dreptului la viața privată prezintă tocmai rolul deținut în cadrul procedeelor probatorii în vederea înțelegerii, protejării și respectării lui.
Cuvinte-cheie: dreptul la viața privată, noțiune, protecție, analiză, proceduri penale.

Introduction. The right to privacy is the fundamental right guaranteed to every person, which encompasses several fundamental rights, such as respect for privacy, freedom of expression, private and family life, domicile, correspondence, protection of personal data, etc. thus protecting the individual from illegal interference from, generically speaking, the state, through the authorities of state institutions, but also from other persons.

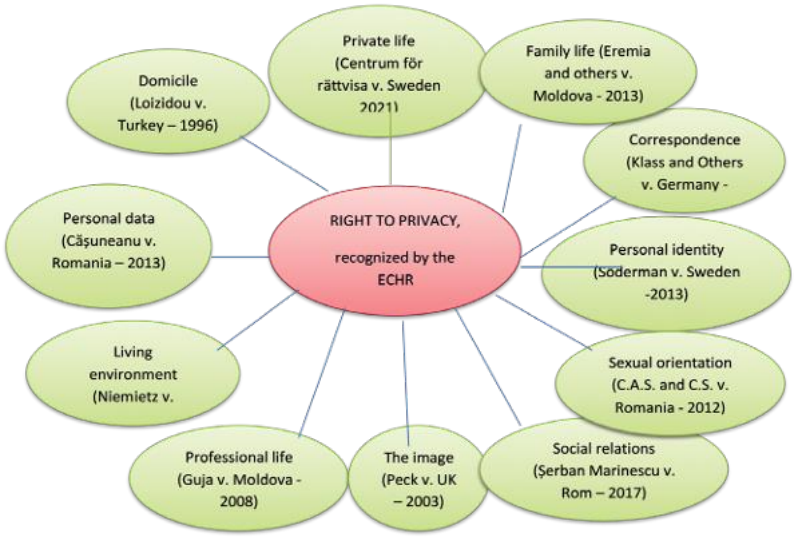
The limits of interference that guarantee the legality of the right to privacy are specified in the laws of the states, as a way of respecting them, problems arise regarding the protection of the individual as a result of the arbitrary action exercised by the state authorities.

Methods and materials applied. The research methods include the analytical method of the legislation regarding the need to protect the right to privacy and its role in its application at the national level; the logical method, from the point of view of the deduction technique, and last but not least the empirical method, by presenting the cases from the ECtHR jurisprudence.

Discussions and results obtained. The right to privacy was first explained in the Universal Declaration of Human Rights of 1948 as "the right to be left in peace", but it has evolved and perpetuated itself in a much broader concept, which could be defined as the right of an individual to be protected, primarily as a result of arbitrary action exercised by state authorities, in accordance with respect for privacy, freedom of expression, private and family life, home, correspondence, protection of personal data, etc., since, as a result of the application of criminal procedure, the right to privacy "excludes any unlawful or arbitrary interference, whether by the authorities or by third parties" [1, p. 42]. In this sense, we want to believe that privacy is a space protected by law against all external legal intrusions.

The jurisprudence of the ECHR (European Court of Human Rights) has developed one of the most influential interpretations of the right to privacy, namely Article 8 of the European Convention on Human Rights, which guarantees respect for private and family life, home and correspondence. However, the Court has constantly expanded the scope of this right, including, among others, personal identity, image, data protection, sexual orientation, living environment. For example, from the ECHR jurisprudence: the case of ***Peck v. United Kingdom*** [2] (2003), the recognition of the right to the protection of one's image against public dissemination in the event of an intrusion into private life; the case of ***Niemietz v. Germany*** [3] (1992), which includes, in addition to intimate life as a right to private life, professional life, with everything that arises in protecting it; since 1996, in the case of ***Loizidou v. Turkey*** [4] (1996), the protection of privacy has also been extended to the inviolability of the home. Also, the case of ***S. and Marper v. United Kingdom*** [5] (2008), concerns the violation of the right to privacy regarding the storage of biometric data (fingerprints, DNA), without consent.

However, the ECHR recognizes the dimensions of privacy increasingly deeply, in the sphere of influence of intimate, family, home life, correspondence, personal identity, image, sexual orientation, social relationships, personal data, professional life, living environment. The following graph illustrates this aspect:



In all areas, the right to privacy is protected by the supreme law, the Constitution of the Republic of Moldova, where Art. 28 provides that "the state respects and protects intimate, family and private life" [6], the Constitution of Romania Art. 26. [7]. However, "the notion of privacy does not lend itself to an exhaustive definition" [8, p.429]. This aspect, subscribed to in the specialized literature and doctrine, is mentioned precisely because of the various definitions. For example, the author Cristina Sâmboan [9, p.191] in her work mentioned that the right to privacy came into being in the United States when a lawyer from Boston, Samuel Warren, together with his friend Louis Brandeis, a professor at Harvard University, wrote in 1890, an essay entitled "The Right to Privacy", defining the right to privacy as "the individual's right to be left alone". In other words, the author mentions that "private life circumscribes that "zone" of existence that we want, for various and natural reasons, to be sheltered from any foreign gazes or intrusions, a domain in which we either do not let anyone "enter", or we reserve the right to select any guests" [9, p. 191]. Author Ion Cobîșenco [10, p.150] also opined about private life that it is in a stage of remodeling, closely related to the accelerated technical and scientific development based on "the main aspects that must be ensured so that the person has the right to be left alone" [10, p. 150]. In another vein, the author Iulia Butnaru focused, in understanding the notion, on the jurisprudence of the European Court of Human Rights, namely on "the right to privacy, the right to an intense life, as much as a person wants to be protected from publicity" [11, p. 183-184]. And the author Alan Westin understood by private life: "People's desire to freely choose in what circumstances and to what extent they will expose themselves, their attitude and behavior" [12, p. 2].

In the specialized literature, the right to privacy is assimilated with the individual's right to a restricted and anonymous life [13, p. 16]. Privacy in private life is also protected in such a way as to protect the individual against state interference in the application of criminal procedural norms. In this sense, the author Boris Glavan opines that "the right to privacy (...) presupposes that a citizen has the right to demand from the state positive actions aimed at ensuring the protection of this right" [14, p.238]. We are talking about reasonable and objective justifications, such as the legitimate aim, proportionality between the aim pursued and the means used.

In the application of criminal procedure, we also refer to Resolution No.428 of the Consultative Assembly of the Council of Europe, of 23 January 1970, which states: "in its essential limits, the right to respect for private life consists in the possibility for the individual to lead his life as he wishes, with a minimum of interference. This right refers to private life, family life and that of the home, to physical and moral integrity, to honour and reputation, to not being presented in a false light, to not disclosing unnecessary and embarrassing facts, to the publication without authorisation of private photographs, to protection against espionage and unjustified or inadmissible indiscretions, to protection against the misuse of private communications, to protection against confidential information communicated or received by a private individual" [15, p. 62]. In the opinion of authors Alina Săvoiu and Cătălin Căpățîne, the right to privacy represents "our right to preserve an area around us, which includes those things that are part of us, such as our home, body, feelings, secrets and identity" [16, p. 90]. The authors mention that the right to be left alone has passed into the right to control one's own data, imposing behavioral rules on all those who operate with personal data, which has allowed a concrete application of the principles of equality and social dignity [16, p. 91].

From the case law of the ECHR, it follows that interference by a public authority in the private life of a person is lawful only if it satisfies the conditions imposed by para-

graph 2 of Article 8, namely: if it was provided for by law, if it pursued one or more legitimate aims and if it was necessary in a democratic society. "The absence of a reasonable and objective justification, namely if it is not justified by a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim pursued" [17, p. 141], interference in private life is not only prohibited, but also sanctioned. In the sense of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, states through their authorities "must act in such a way as to allow those concerned to lead a normal family life, protecting the individual from arbitrary interference by public authority." Iulia Butnaru, referring to Art. 8 of the ECHR (right to private life), argues that "a person has the right to live free from restrictions imposed by the state, that private life is superior to public life" [18, p. 3], and when restrictions are imposed on this right, they "must be clearly defined, logically justified and represent the minimum necessary to achieve the legitimate collective objective" [18, p. 3]. The same author Iulia Butnaru specifies the elements that fall within the scope of Art. 8 of the European Court's practice, namely private life: "sexual life, sexual orientation, the person's name and surname, ethnicity, image (photograph) of the person, (...), but also the collection and processing of personal data" [19, p. 145].

We ask ourselves the question, "what does it mean to be clearly defined", insofar as both Romania and the Republic of Moldova have been condemned by the ECtHR countless times, regarding the violation of the right to private life, at different stages and in different years (e.g.: Case ***Toma v. Romania*** [20], of February 24, 2009; Case ***E.M. v. Romania*** [21], of October 30, 2012; Case ***Elena Pop Blaga v. Romania*** [22], of April 10, 2012; Case ***Apostu v. Romania*** [23], of February 3, 2015; Case ***Amaradei and others v. Romania*** [24], of April 26, 2016; Case ***Buturugă v. Romania*** [25], of February 11, 2020; Case ***P. v. Romania*** [26], of December 12, 2023, etc.; Case ***Mușuc v. Moldova*** [27], of 06 February 2008; Case ***Eremia and others v. Republic of Moldova*** [28], of 28 May 2013; Case ***T.M. and C.M. v. Republic of Moldova*** [29], of 28 January 2014; Case ***Munteanu v. Republic of Moldova*** [30], of 26 May 2020, Case ***Luca v. Republic of Moldova*** [31], of 17 October 2023, etc.), however, states have the possibility of regulating the legal framework, in order to prevent other violations of the right to private life. The essence of the right to private life lies precisely in the establishment and correct application of criminal procedural measures, when there is interference in private life. Thus, as the authors A.-I. Bogdan and A.-V. Farcas, establishing an exact boundary between aspects of private life and aspects of public life, considers it a difficult task [32, p.26-27]. We can present the situation of public figures whose intimate life is exposed, the higher the prestige and the more intimate life is affected. Countless public appearances violate the right to privacy (right to one's own image and reputation) and can lead to condemnation by public opinion, before it is established by the court, which often cannot be influenced in the decision that will be issued. We can present in this regard the opinion of the author Sergiu Russu, who states that "the state has the possibility through its means and even must provide security for personal data" [33, p. 80] and not only, security with regard to all measures as a result of state interference in private life (e.g.: the case ***Căşuneanu v. Romania*** [34], of April 16, 2013).

As can be deduced from the doctrinal accounts listed above, the right to privacy consists of the person's right to dispose of himself. In the context of criminal procedural activities, hearings are usually and largely held at the headquarters of the criminal investigation body. Communication, human and vocal language can be affected due to this activity, due to the intimidation of the headquarters, office, external and internal factors, even leading to privacy being affected, as a right to privacy. Witnesses are considered impor-

tant elements in finding the truth in criminal cases, and the obligation not to record the statement in this capacity is limited. The interference between the interests of finding the truth, interference in the intimate life of witnesses, can be affected and cause violations of the right to privacy and more. In Romania, the violation of the right to privacy can also occur as a result of the recording of witness statements by criminal investigation bodies, on the occasion of which the latter typewrite the aspects presented by the witnesses. Typing is not always the expression of free will and the exact account of the declared aspects, as could happen as a result of recording statements by hand by the parties (witnesses), a procedure that gives the criminal investigation body the possibility to change the meaning of the sentence, mainly due to its interest in the matter. In such situations, we no longer find ourselves recording the statement of the person who is the subject of the hearing, being obstructed due to these means that can distort and completely change the meaning of the statement. In such circumstances, we cannot consider the statement as being that of the person who was heard, and the right to privacy is also violated due to the possibility of carrying out the activity of recording statements, by typing by the criminal investigation bodies. Freedom of expression is affected to the extent that the statement of the persons who are the subject of the hearing is typed through the filter of the criminal investigation body. In such situations, through the eyes, training and senses of the investigator, they can change the meaning of some sentences. If, during the hearing, the statements of the persons subject to the hearing were only typed by the criminal investigation bodies, we were not in a position to make changes to the statements, but procedurally, the criminal investigation bodies are the ones that, we cannot say that they only type, to the extent that the aspects presented vocally by the parties are recorded in the statements of the parties by the latter, by developing, elaborating the sentences, therefore by means of their understanding. In the situation of writing and changing the meaning of the sentences, we are in the still of the diverse string of words. The venue where the hearing is held gives the criminal investigation bodies the opportunity to observe, through the emotion created in the parties (witnesses), education, etc., the human language, in such a way as to lead to taking over of various realities that change the meaning of the truth, without abrupting the reality, which can be discovered during the hearing. The criminal investigation bodies can change the meaning of the expression, by combining the elementary meanings of the words of the parties. Although, upon completion of typing, the parties sign and record that they have read the statement recorded by the criminal investigation bodies, in most cases due to destabilizing factors, they sign without reading it. We find ourselves in such situations, with a violation of the right to privacy, through the violation method of disposing of the party themselves. E.g., the countless cases regarding the investigation of witnesses for the crime of perjury, precisely as a result of contesting the aspects recorded in the statements during the criminal investigation phase, contrary to the aspects presented to the courts. We ask ourselves why this form of recording of the parties' statements by the criminal investigation bodies is considered legal, to the extent that it can produce negative effects or why some categories of witnesses are obliged to record the statement for the cause in which they are requested. We call this obligation an intrusion into the private life of the party, in the situation where he does not want to be a party to the case, to be requested to be present at established dates and times, etc. Of course, the essence of the right to privacy is to protect the parties from violations that also affect their privacy, even through the legal intrusion of the state into their lives, by establishing procedural norms for the correct application of private life. Privacy in the criminal process must also be a component part of private life based on legality, consti-

tuting, as the authors I. Ifrim and R.O. Ionescu mention, "an essential element of the harmonious development of man" [35, p. 27].

Although the Romanian legislation provides for liability for "violation of private life", Art. 226 of the Romanian Criminal Code, it does not provide for the violation of private life as a result of the recording of different aspects of the parties by criminal investigation bodies. Similarly, according to the legislation of the Republic of Moldova, Art.177 of the Romanian Criminal Code "violation of the inviolability of personal life", amendments are necessary to regulate such a practice.

The scope of the notion of "private life", which falls within the scope of Art. 8 of the ECHR: "sexual life, sexual orientation, name and surname of the person, ethnicity, image (photograph) of the person, (...), but also the collection and processing of personal data" [19, p. 145], and in relation to Art. 28 of the Constitution of the Republic of Moldova, the CCRM mentioned that "it allows individuals to rely on their right to private life with regard to information that, although neutral, is collected, processed and disseminated" [19, p. 145].

Conclusions. The following conclusions and recommendations do not represent a mere recapitulation of the ideas developed in this paper, but rather a coherent integration of them into a unitary vision, necessary for understanding the role that the right to privacy plays in the architecture of human rights and in the application of criminal procedures.

The evolution of the right to privacy in Romania and the Republic of Moldova has diversified and has also extended to the application of criminal procedures due to the transformations and evolution generated by the digital age and beyond.

Today, privacy no longer means only the protection of privacy, domicile and correspondence, but also their defense, but also of the identity, personal data and dignity of the individual.

Regarding interference in the application of criminal procedure, the right to privacy remains a dynamic and sensitive fundamental right, between constitutional compliance, the national legislation of ROM and RM and the jurisprudence of the ECHR, being considered one of the greatest challenges of societies.

Even if it does not have a single definition, covering a set of situations, such as personal identity, dignity, reputation, family life, domicile, correspondence, personal data, privacy in the application of criminal procedures is necessary to protect the parties involved in the processes.

As recommendations, we present the following:

– Criminal procedural rules should be adapted and inspired by the ECHR jurisprudence and GDPR standards;

– Periodic training in the field, on the application of procedures, as a result of interference in private life and impact assessments on compliance with criminal procedures in accordance with private life;

– Inclusion in criminal procedural practice of clear rules on the duration, purpose, limits of interferences, on interceptions, searches, technical surveillance, mechanisms for subsequent notification not only of the persons concerned, but also of the persons who were intercepted following conversations with the person concerned, by introducing such new rights in the Criminal Procedural Code (CPC);

– Introduction of clear rules on the use of algorithms in criminal proceedings, facial recognition, biometric surveillance and protection of digital identity;

– Development of a guide to good practices in the field, on the application of crimi-

nal procedure in accordance with the respect for the right to privacy;

– Development of solid procedural guarantees regarding the respect for the right to privacy, as a result of the application of criminal procedures, clear legislation and coherent case law;

– Periodic inter-institutional cooperation on all aspects related to the procedure and the way to respect the right to privacy between the police, prosecutors' offices, courts and data protection authorities.

Also, the statements of witnesses being personal, there should be no possibility of their being recorded by the criminal investigation body conducting the hearing.

Introduction of a new paragraph (3) to Art. 123 of the CPC ROM, "Recording of statements" with the following wording: "The statements of the witness cannot be recorded by the criminal investigation body conducting the investigation".

Introduction of a new paragraph (1^1) to Art. 105 of the CPC RM, "Witness statements and the conditions of their hearing" with the following wording: "Witness statements cannot be recorded by the criminal investigation body conducting the investigation".

Bibliographical references

1. Slăvoiu R. Criminal Protection of Private Life. Bucharest: Ed. Universul Juridic, 2016, 623p.
2. ECtHR Judgment Peck v. Great Britain, of 28.01.2003, No.44647/98. Available: https://hudoc.echr.coe.int/eng?i=001-60898 (visited 20.02.2026).
3. ECtHR Judgment Niemietz v. Germany, of 16.12.1992, No. 13710/88. Available: https://hudoc.echr.coe.int/eng?i=001-57887 (visited 20.02.2026).
4. ECtHR Judgment Loizidou v. Turkey, of 18.12.1996, No. 15318/89. Available: https://hudoc.echr.coe.int/eng?i=001-58007 (visited 20.02.2026).
5. ECtHR Judgment S. and Marper v. United Kingdom, of 04.12.2008, No.30562/04 and 30566/04. Available: https://hudoc.echr.coe.int/eng?i=001-122082 (visited 20.02.2026).
6. Constitution of the Republic of Moldova of 29.07.1994. In: Official Gazette of the Republic of Moldova No.78/140 of 29.03.2016.
7. Constitution of Romania, of 21.11.1991. Republished. In: Official Gazette No.767 of 31.10.2003.
8. Ciuncan D. Dictionary of Criminal Procedure. Bucharest: Ed. Universul Juridic, 2015, 468p.
9. Sâmboan Cr. The private life of the employee in the digital era. In: The impact of social-economic and technological transformations at the national, European and global levels, 2015, No.5, vol. 5, p.190-199. Available: file:///C:/Users/User/Desktop/Downloads/ssrn-2664971.pdf (visited 20.02.2026).
10. Cobîșenco I. Video surveillance in relation to the respect of privacy. In: National Law Journal No.10-12 (240-242), 2020, p.150-158. Available: https://ibn.idsi.md/sites/ default/files/imag_file/150-158_1.pdf (visited 22.02.2026).
11. Butnaru I. Dimensions of the fundamental right to the protection of family life. In: Studii Juridice Universitare No.3-4/2014, p.181-193. Available: https://ibn.idsi.md/ro/vizualizare_articol/47322 (visited 22.02.2026).
12. Carp R., Şandru S. The right to privacy and the protection of personal data. Bucharest: Ed. All Beck, 2004, 202 p.
13. Lindan R. Les Droits de la personnalité. Dalloz, Paris, 1974, 353 p.
14. Glavan B. The special investigative activity and the criminal process: common aspects

and delimitations. Chisinau: Ed. Print-Caro SRL, 2022, 475 p.
15. Micu D. Guaranteeing human rights. Bucharest: Ed. All Beck, 1998, 285 p.
16. Săvoiu A., Căpăștine C. The right to private life. In: Annals of the "Constantin Brâncuşi" University of Târgu Jiu. Legal Sciences Series, 2013, No.1, p.89-96.
17. Decisions of the ECHR. Selected Collection. Polirom, Iaşi, 2000, Darby vs Sweden, Decision of 23 October 1990. In: Preduca (Predişor) G. M., Considerations on the protection of the right to private life. Available: https://drept.ucv.ro/RSJ/images/articole/2009/RSJ4/C01PreducaGrigorianaManuela.pdf (visited 22.02.2026).
18. Butnaru I. Multidimensionality and complexity of the right to intimate, family and private life. In: Materials of the Conference "Promotion of human rights in the context of European integration: theory and practice". Chisinau, Moldova, October 18, 2013, p.249-261. Available: https://ibn.idsi.md/ro/vizualizare_articol/124758 (visited 22.02.2026).
19. Mihai Poalelungi [et.al.]. The European Convention on Human Rights. Commentary on the decisions of the European Court of Human Rights versus the Republic of Moldova. Conclusions and recommendations. Chisinau: National Institute of Justice, 2017, p.158-159. In: Butnaru I. The right to intimate, family and private life in the jurisprudence of the European Court of Human Rights. In: National Law Review No.1(243)/2021. p.142-151. Available: https://ibn.idsi.md/sites/default/files/imag_file/142-151_4.pdf (visited 22.02.2026).
20. ECtHR Judgment Toma v. Romania, of 24 February 2009, No.42716/02. Available: http://hudoc.echr.coe.int/eng?i = 001- 123515 (visited 22.02.2026).
21. ECtHR Judgment E.M. v. Romania, of 30 October 2012, No.43994/05. Available: https://ier.gov.ro/wp-content/uploads/cedo/E.M.-impotriva-Romaniei.pdf (visited 22.02.2026).
22. ECtHR Elena Pop Blaga v. Romania, of 10 April 2012, No.37379/02. Available: http://ier.gov.ro/wp-content/uploads/cedo/Cauza-Pop-Blaga-impotriva-Romaniei (visited 22.02.2026).
23. ECtHR Apostu v. Romania, of 3 February 2015, No.22765/12. Available: http://ier.gov.ro/wp-content/uploads/2020/11/Apostu-impotriva-Romaniei.pdf (visited 22.02.2026).
24. ECtHR Judgment Amaradei and others v. Romania, of 26.04.2016, No.1443/10. Available: http://ier.gov.ro/wp-content/uploads/cedo/Amarandei-si-altii-impotriva-Romaniei (visited 22.02.2026).
25. ECtHR Judgment Buturugă v. Romania, of 11 February 2020, No.56867/15. Available: https://ier.gov.ro/wp-content/uploads/2021/03/Buturuga-impotriva-Romaniei-2.pdf (visited 22.02.2026).
26. ECtHR Judgment P. v. Romania, of 12 December 2023, No.36.049/21. Available: https://legeaz.net/monitorul-oficial-184-2024/decizie-cedo-p-contra-romaniaie; https://legislatie.just.ro/public/DetaliiDocument/279662 (visited 22.02.2026).
27. ECtHR Judgment Mușuc v. Moldova, of 06.02.2008, No.42440/06. Available: https://hudoc.echr.coe.int/eng?i=001-127893 (visited 22.02.2026).
28. ECtHR Judgment Eremia and Others v. Republic of Moldova, of 28.05.2013, No.3564/11. Available: https://hudoc.echr.coe.int/eng?i=001-145943 (visited 22.02.2026).
29. ECtHR Judgment T.M. and C.M. v. Republic of Moldova, of 28.01.2014, No.26608/11. Available: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2226608/11%22], %22itemid%22:[%22001-145045%22]} (visited 22.02.2026)
30. ECtHR Judgment Munteanu v Republic of Moldova, of 26.05.2020, No.34168/11. Available:

https://agent.gov.md/comunicate-de-presa/munteanu-v-republica-moldova-2/; and on: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202554%22]} (visited 22.02.2026).
31. ECtHR Judgment Luca v. Republic of Moldova, of 17 October 2023, No.55351/17. Available: https://www.agentgovoritalian.md/wp-content/uploads/2024/02/HOTARA-REA-LUCA-v.-MDA-traducere-RO.pdf (visited 22.02.2026).
32. Bogdan A.-I., Farcas A.-V. Theoretical and practical aspects regarding the right to private life. In: Academica Science Journal Studia Series, No.(8) 3 – 2014. In: Crijanovschi S., Bogdan A. Some modern doctrinal visions and solutions of law ferenda regarding private life in the substantive criminal law of the Republic of Moldova. In: National Law Review, 2017, No.5(199), pp.24-30. Available: https://ibn.idsi.md/sites/default/files/imag_file/24_30_ Some%20modern%20doctrinal%20visions%20of%20law%ferenda%20referitoare%20la%20viata.pdf (visited 20.02.2026).
33. Russu S. The limits of criminal liability for the disclosure of personal data. In: Journal of the Prosecutor's Office of the Republic of Moldova, No.3, 2019, p.78-81. Available: https://ibn.idsi.md/sites/ default/files/imag_file/78-81_27.pdf (visited 20.02.2026).
34. ECtHR Judgment Căşuneanu v. Romania, of 16.04.2013, No.22018/10. Available: http://ier.gov.ro/wp-content/uploads/cedo/Casuneanu-impotriva-Romaniei.pdf (visited 22.02.2026).
35. Ifrim I., Ionescu R.-O. Criminal protection of the social and intimate life of the person. p.511-514. Available: http://journaldatabase. info/download/pdf/roxana_oana_ionescu_criminal. In: Crijanovschi S., Bogdan A. Some modern doctrinal views and solutions of law ferenda regarding private life in the substantive criminal law of the Republic of Moldova. In: National Law Review, 2017, No.5(199), pp.24-30. Available: https://ibn.idsi.md/sites/default/files/imag_file/24_30_Unele %20 viziuni %20doctrinare%20moderne%20si%20solutii%20de%20lege%20ferenda%20referitoare%20la%20viata.pdf (visited 20.02.2026).

CZU: 351.86(478) **DOI: https://doi.org/10.5281/zenodo.20810225**

NATIONAL SECURITY ENVIRONMENT OF THE REPUBLIC OF MOLDOVA: RISKS AND THREATS

Dianu GORDILĂ,
PhD, University Lecturer,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0003-6565-5198

Cătălin ENUȚĂ,
PhD, Associate Professor,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0003-8239-2596

Abstract

This article analyzes the complex process of genesis and evolution of the Republic of Moldova's law enforcement and security structures (Ministry of Internal Affairs, National Army, Intelligence and Security Service, and the State Protection and Guard Service) during the 1990–2026 period. The study highlights how the national security architecture was shaped not merely through administrative reforms, but primarily as a critical response to the secessionist conflicts in Transnistria and political tensions in TAU Gagauzia. The paper traces the transition from the reactive legislation of the 1990s toward a modern normative framework, culminating in the 2023 National Security Strategy, which introduces the concept of hybrid resilience. Particular attention is paid to the taxonomy of contemporary threats, demonstrating how factors such as systemic corruption, energy blackmail, and external electoral interference undermine territorial integrity and internal systemic stability.

In conclusion, the article argues that the security of the Republic of Moldova has evolved from a military-centric paradigm toward an integrated security model, where the success of security institutions increasingly depends on their capacity to protect democratic processes against asymmetric and transborder challenges within a volatile geopolitical context.

Keywords: National Security, Law Enforcement Structures, Hybrid Warfare, Territorial Integrity, Intelligence and Security Service (SIS), Ministry of Internal Affairs (MAI), National Army, Security Strategies.

MEDIUL DE SECURITATE NAȚIONALĂ A REPUBLICII MOLDOVA: RISCURI ȘI AMENINȚĂRI

Abstract

Articolul analizează procesul complex de constituire și evoluție a structurilor de ordine publică și securitate ale Republicii Moldova (Ministerul Afacerilor Interne, Armata Națională, Serviciul de Informații și Securitate și Serviciul de Protecție și Pază de Stat) în perioada 1990–2026. Studiul evidențiază faptul că arhitectura securității naționale s-a configurat nu doar prin reforme administrative, ci, în principal, ca răspuns la conflictele secesioniste din Transnistria și la tensiunile politice din UTA Găgăuzia. Lucrarea urmărește tranziția de la legislația reactivă a anilor 1990 către un cadru normativ modern, culminând cu Strategia Securității Naționale din 2023, care introduce conceptul de reziliență hibridă. O atenție deosebită este acordată taxonomiei amenințărilor contemporane, demonstrând modul în care factori precum corupția sistemică, șantajul energetic și interferențele externe în procesele electorale afectează integritatea teritorială și stabilitatea internă a sistemului statal.

În concluzie, articolul susține că securitatea Republicii Moldova a evoluat de la o paradigmă centrată pe dimensiunea militară către un model integrat de securitate, în cadrul căruia succesul instituțiilor de securitate depinde tot mai mult de capacitatea acestora de a proteja procesele democratice împotriva provocărilor asimetrice și transfrontaliere, într-un context geopolitic volatil.

Cuvinte-cheie: securitate națională, structuri de ordine publică, război hibrid, integritate teritorială, Serviciul de Informații și Securitate (SIS), Ministerul Afacerilor Interne (MAI), Armata Națională, strategii de securitate.

Introduction. The Republic of Moldova is going through a period with multiple risks and threats, both older and newer, of both internal and external nature, such as the existence of an unresolved conflict or the risk of aggression manifesting in the region, or the presence of elements specific to hybrid warfare [1]. Among these are the unresolved Transnistrian conflict, the risk of escalation or manifestation of aggressive actions in the region, as well as the intensification of hybrid warfare elements, such as disinformation, cyberattacks, economic pressures, and attempts to influence democratic processes. These challenges, directly or indirectly, affect the national security, political stability, and socio-economic development of the state, necessitating the strengthening of public institutions, increasing societal resilience, and deepening cooperation with international partners.

Traditionally, when we thought about a state's security, the reference image was that of an army defending its borders. Today, however, the configuration of the security environment has radically transformed, shifting from clear and predictable threats to a complex ecosystem of interconnected global, regional, and internal challenges. The main characteristic of this new context is accelerated dynamism; the world is changing so rapidly under the influence of technology and tensions between major powers that the reaction capacity of state institutions is often severely tested. This "speed of dangers" currently represents the greatest vulnerability for any sovereign state.

Thus, the concept of security has expanded beyond the protection of constitutional order and the military sphere, now including vital elements such as digital stability, the protection of energy resources, and the ability to resist disinformation or economic blackmail.

A state that does not constantly analyze its risk environment becomes extremely fragile in the face of strategic surprises. For the Republic of Moldova, situated at the intersection of major geopolitical interests, the continuous adaptation of its security structures and legislation is not merely an option for modernization, but a fundamental necessity. This adaptation process, documented in national security strategies over recent decades, represents the foundation upon which the resilience of our society is built in the face of increasingly invisible and constant threats.

The construction of our state began with the Declaration of Sovereignty (1990) and was finalized with the Declaration of Independence (1991). In those critical moments, Moldova had an urgent mission: to create its own security system to replace the old mechanisms controlled from Moscow. In a period marked by the dissolution of the Soviet Union and internal tensions that led to the tragic war on the Dniester, the new security institutions (the Police, the National Army, the Intelligence and Security Services) were not just structures of law and order; they represented the very guarantee that the Republic of Moldova would survive as a state on a world map that was changing radically before our eyes.

The transition from the militarized and politically controlled system of the Soviet era to a democratic one was not easy. The state had to confront three major challenges:

– Gradually removing the military footprint from internal affairs;
– Transforming soldiers into professionals who respect the country's neutrality;
– Reforming the Intelligence Services so that they operate strictly within the limits of the law.

Today, as we move ever closer to the European Union, we are witnessing a shift in vision: the Republic of Moldova no longer wants to be just a country that "asks for" help and security, also the protagonist of a new European policy – and of the "new neighborhood" [19]. Reducing the chances of the European path for the Republic of Moldova facilitates the accentuation of certain risks [8]. Our objectives go beyond simple border guarding; we wish to actively participate in European defense platforms and international crisis management missions. This evolution is essential, because without a modern and robust security system, we cannot speak of a stable economy or the success of EU accession negotiations [12].

The increasingly close collaboration with Europe, from visa-free travel to trade agreements, has been supported by the political will to bring European standards to all state institutions. Only thus, by participating in various international missions, will it be shown that the Republic of Moldova shares the same security values as the entire European community.

Therefore, this article analyzes how the institutions of the Republic of Moldova emerged and developed. We will see how the journey from independence to the present day now allows us to occupy a respected place in the European security system, and how we have managed to build our resistance (resilience) in the face of modern dangers, from hybrid attacks to the major current geopolitical tensions.

Methods and materials applied. The rigorous foundation of this study required the adoption of a multidisciplinary methodological approach, capable of integrating the historical, legal, and political science dimensions of the national security system. The research design was based on a broad spectrum of documentary materials, segmented between the normative-legislative framework of the Republic of Moldova and the relevant specialized literature for the European space.

The empirical basis of the work includes the founding acts of the state, such as the Declaration of Independence and the Constitution, complemented by a meticulous analysis of the organic laws regulating the functioning of various structures and the national security strategies adopted over the three decades of statehood.

To process this volume of information, priority was given to the historical method, essential for reconstructing the process of institutional genesis from the period 1990-1992 and for understanding how the Soviet administrative legacy conditioned the early stages of democratic reform.

The analytical dimension of the study was strengthened by applying the comparative method, used to measure the degree of alignment of national institutions with the standards of the European Union's Common Security and Defence Policy. At the same time, the adoption of a systemic approach allowed for the examination of the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Economy and Digitalization, the Intelligence and Security Service, and others, not as isolated entities, but as interdependent elements of a unitary mechanism, in constant interaction with the regional security environment.

Finally, through the use of logical and deductive analysis, it was possible to outline the correlations between internal vulnerabilities, such as corruption or energy insecurity, and the major risks to territorial integrity, thus offering a prospective view of the state's

response capacity in the face of contemporary geopolitical challenges.

Discussions and results obtained. The current security environment is characterized by increased unpredictability in the global system of international relations and the difficulty of delineating classic risks and threats from asymmetric ones [21].

The genesis of the security system in the Republic of Moldova can be divided into three fundamental stages: 1) the transition period (1990-1991); 2) the stage of consolidation through fire (1992); and 3) the phase of modernization reforms (after 1999).

Unlike other structures, the Ministry of Internal Affairs was the "promoter of institutional reform". On December 18, 1990, with the adoption of the Law on Police, the Republic of Moldova became one of the first states in the post-Soviet space to abandon the terminology of "militia". This change was not merely semantic; it aimed at transitioning from a body of repression to one focused on the protection of citizens' rights [14].

Subsequently, on December 12, 1991, the Carabinieri Troops were established, a hybrid structure intended to ensure public order in crisis situations, adopting the model of traditional European states (Italy, France) [16].

While the police inherited and reformed, the National Army had to be created almost from scratch. The turning point was September 3, 1991, when Decree No.193 laid the foundations of the Armed Forces. The war for the territorial integrity of the Republic of Moldova forced an acceleration in the equipping and organization of the Ministry of Defense (officially established in February 1992) [10]. The absence of a pre-existing military infrastructure (most Soviet units being directly subordinate to Moscow) turned this process into an act of national volunteerism and resilience.

In the security architecture of the Republic of Moldova, the segment dedicated to state protection has undoubtedly undergone the most complex and sensitive institutional transformation, having the delicate task of managing the succession and, subsequently, the detachment from the central structures of the Soviet KGB. This process of identity and functional rupture formally began in September 1991, with the transformation of the former State Security Committee into the Ministry of National Security (MNS) [15]. This first stage represented an attempt to provide the new sovereign state with its own protection instrument; however, the structure initially retained a classic ministerial configuration with extensive executive functions, specific to the transition period. The evolution towards a democratic security model reached a turning point with the reform of 1999. This stage was marked by the crystallization of the understanding that a rule-of-law state does not require an "institution" with discretionary executive powers in the field of security, but rather a specialized, lean, and efficient body.

The result of this strategic reevaluation was the creation of the Intelligence and Security Service (SIS), an institution redefined as a specialized structure strictly focused on intelligence and counterintelligence activities. Beyond the name change, the reform aimed to streamline the service's mission and, crucially, to place it under rigorous parliamentary control, thereby ensuring the necessary balance between the imperative of operational secrecy and respect for citizens' rights in a democratic society.

At the same time, the relevant legislation defining national security treatment must be sufficiently flexible to allow a security intelligence service to scan the horizon and prepare for emerging threats [18].

Unlike structures with a general mission, the State Protection and Guard Service (SPPS) crystallized as a niche necessity, being designed to ensure the continuity of governance through the protection of state representatives. The institution was founded on January 27, 1992 (Decree No.11) under the name of the Presidential Protection Service,

initially functioning as a subdivision with strictly limited duties confined to the bodyguard of the head of state [9].

A decisive stage of maturation occurred in 1998, when the structure was reorganized into the State Protection and Guard Service. This reform significantly expanded the institution's competencies and reconfigured its political oversight, marking the transition from the exclusive tutelage of the Presidency to a variable subordination regime (Government, Parliament, or Presidency), depending on the evolution of the legislative framework [13].

Currently, the SPPS is an institution specialized in the national security architecture, with the complex mission of ensuring the protection of domestic dignitaries, foreign guests, and the working premises of the main state institutions. Thus, the service has evolved from a tactical escort unit to a strategic pillar guaranteeing the functional stability of the Republic of Moldova's authorities.

The outbreak of the Dniester conflict in the early 1990s came as a surprise to the international community, which, at the time, did not know how to react.

At the same time, the young state, still burdened by the Soviet legacy and lacking the necessary diplomatic experience, was drawn into several settlement schemes that most often proved unsuccessful. The Russian Federation, as the "first violin" in the negotiation process, dictated the signing of agreements by the Republic of Moldova that further bogged down the negotiation process and made Tiraspol increasingly less "dependent" on Chișinău. The European Union's enlargement process in the mid-2000s, and the concomitant entry of the Republic of Moldova into the EU's "sphere of attraction," rekindled certain hopes that this conflict would be resolved in a manner that would preserve the sovereignty and territorial integrity of the Republic of Moldova.

During the critical early period of the 1990s, the authorities in Chișinău found themselves facing a major strategic dilemma: how to maintain order in the south of the country without provoking an open conflict, similar to the one on the Dniester. Tensions with leaders in Comrat and the emergence of local paramilitary formations created the imminent risk of a "second front" [6], which would have exhausted the already limited resources of the young state. In this context, the establishment of the Carabinieri Troops on December 12, 1991, was not merely a routine administrative decision but a tactical move of vital importance.

Unlike the army, which is trained to destroy the enemy, the Carabinieri Troops (currently the General Inspectorate of Carabinieri) were formed as a force with a dual status (military and public order), capable of intervening with proportional force. This "adaptability" allowed the state to deploy units to areas of ethnic instability that could restore peace without being perceived as an occupation army. Their presence provided Chișinău with "precious time" for negotiations, acting as a security filter that prevented direct clashes between radicalized civilians and government forces [11].

Moreover, the choice of the European gendarmerie model sent a clear message to international partners: the Republic of Moldova was choosing the path of democratization and civilized management of internal crises, even under conditions of extreme pressure. This strategy of "moderate force" was decisive in preventing a humanitarian catastrophe in the south, demonstrating that stability can be maintained through institutions that prioritize de-escalation and dialogue over armed confrontation. Thus, the carabinieri became the backbone of a new security doctrine, one in which maintaining public order is seen as an essential step towards lasting political peace.

The security architecture of the Republic of Moldova has traversed a complex evolu-

tionary trajectory, marking the transition from a normative framework based on sectoral functioning laws towards an integrated and multidimensional public policy structure. The genesis point of this strategic configuration lies in the adoption of the 1994 Constitution, where Article 11 established the status of permanent neutrality [5]. This provision did not merely represent a foreign policy option but functioned as a limiting strategic framework that directly determined the volume of investment in the defense sector and outlined the limits of international cooperation, forcing the state to define its security within a paradigm of military self-restraint.

This traditional vision began to be nuanced with the adoption of the 2011 National Security Strategy, a document that laid the foundations for a multidimensional approach to state security [7]. If at that stage the emphasis was on creating structures capable of ensuring internal stability and public order in relation to classic risks, the New National Security Strategy of 2023 marks a fundamental qualitative leap in Chișinău's strategic thinking.

The current public policy document operates a paradigm shift, abandoning the restrictive vision of "border defense" in favor of the modern concept of "national resilience". This change reflects a deep understanding of the contemporary geopolitical context, recognizing that modern threats are often invisible, constant, and hybrid.

Thus, security is no longer perceived as a simple reaction to external aggression, but as a systemic capacity of the state and society to absorb shocks and maintain functionality in the face of multi-directional challenges. Through this fine-tuning of the legal and political framework, the Republic of Moldova moves from a reactive to a proactive security model, focused on strengthening internal resistance as the main guarantor of state integrity.

The European Union has made important decisions and given new impetus to its efforts to strengthen security and the defense dimension. The development of a common foreign security policy includes the progressive definition of a common defense policy, as well as the definition of its security interests, particularly in its immediate neighborhood [3].

In the current geopolitical context, some of the most important the national security of the Republic of Moldova transcends the paradigm of classical military confrontations, being targeted by a complex ecosystem of hybrid threats designed to erode the foundations of the state from within. A critical dimension of this new security landscape is systemic corruption, treated in recent strategic documents not merely as a common crime, but as a major factor of national insecurity.

Currently, the most significant threats to the security of the Republic of Moldova are the Transnistrian conflict, external hybrid influences, cyberattacks, energy vulnerabilities, and the effects of the war in Ukraine. These risks require a combination of military, economic, informational, and institutional measures to protect the state's stability and sovereignty.

Simultaneously, democratic processes have become prime targets of hybrid warfare, where interference in electoral processes through illicit financial flows and concerted disinformation campaigns has imposed a redefinition of missions for security institutions.

These actions are not always evident or declared, but act subtly in the gray zones of security, combining non-military methods with psychological, economic, and informational influence tools [2]. These entities have evolved towards the role of guarantors of the integrity of the electoral process, extending their area of competence from the physical protection of dignitaries to securing digital infrastructure and the legitimacy of citizens' votes.

At the same time, internal pressure is compounded by energy vulnerability, frequently used as an instrument of political blackmail, a fact that has shifted the security "front" into the area of critical infrastructure management.

Therefore, diversifying supply routes and ensuring energy security have become national security priorities, under the direct monitoring of the Supreme Security Council.

Thus, by integrating responses to corruption, hybrid attacks, and energy blackmail into a unitary strategy, the Republic of Moldova is recalibrating its force structures to face a security environment where the border between internal and external threats becomes increasingly fluid.

Alignment with European standards involves implementing modern policies and regulations in the energy field, in accordance with European Union practices. This process favors market transparency, attracting investments, and consumer protection. Aligned with the country's international commitments, the National Integrated Energy and Climate Change Plan (PNIEC) will play a vital role in ensuring a fair and sustainable energy transition, thus contributing to environmental protection and improving the quality of life for all citizens [17].

At the national level, cybersecurity is a shared responsibility that requires coordinated actions for prevention, preparedness, response, and recovery from incidents by government authorities, the private sector, and civil society. For this to work smoothly and to ensure a secure and resilient digital sphere, a comprehensive framework or strategy needs to be developed, implemented, and executed in a multi-stakeholder approach [4].

The security of the Republic of Moldova is governed by a fragile balance between proclaimed sovereignty and the complex administrative realities on the ground, being exposed to a category of interdependent risks targeting both territorial integrity and the stability of the internal system. The most visible security vulnerability of the Republic of Moldova remains the unconstitutional foreign military presence in the Transnistrian region, where the existence of the Operational Group of Russian Forces (OGRF) contingent and Transnistrian paramilitary structures constitutes a permanent asymmetric threat. The major strategic risk lies in the potential activation of these forces in the event of a change in the dynamics of the regional front, turning the separatist region into a bridgehead for offensive operations that could irremediably compromise state security.

Complementary to territorial risks, the integrity of the state border is subjected to enormous pressures generated by massive migration flows and the risk of illicit trafficking in weapons or prohibited substances, requiring multidimensional coordination between the Border Police and the Intelligence and Security Service (SIS).

However, state stability is conditioned not only by geographical demarcation lines but also by the cohesion of the internal system. The political instrumentalization of ethnic and linguistic diversity represents a risk of radicalization of certain social groups, which can challenge central authority through mechanisms similar to the crises of the 1990s. This polarization is often amplified by what experts define as "strategic corruption", a process by which foreign actors undermine the loyalty of public officials, causing institutional paralysis that prevents the state from exercising its monopoly on legitimate violence at critical moments.

In conclusion, the security of a state is a central element for every community and constitutes a fundamental condition for the life of a democracy [20].

Conclusions and recommendations. If we look back at the path taken by the Republic of Moldova's security institutions from the moment of independence to the present day, we see a continuous adaptation to a turbulent and often unfriendly regional reality.

The building of these institutions was not merely a routine bureaucratic procedure, but a real struggle for the survival of the state. The transition from the old Soviet model to a modern, democratic security system has shown that our society possesses an astonishing capacity for resilience. Even with limited resources and a frozen conflict on its territory, we have managed to professionalize and modernize our security institutions.

A key conclusion of this study is that today, a country's security is no longer just about guarding its borders. In the century we live in, a state's independence depends just as much on how we defend ourselves against "invisible" threats: cyberattacks, blackmail involving gas and energy, or the various forms of corruption through which foreign actors try to control institutions from within. The changes within the Intelligence and Security Service (SIS) and the State Protection and Guard Service (SPPS), the modernization of the police and gendarmerie according to European models, the new 2023 Security Strategy, and other essential changes show that Moldova has learned to stop being merely reactive (waiting for something bad to happen before acting) and has become proactive, building a well-structured national resilience.

In the digital age, modern societies are globally interconnected and increasingly dependent on ICT and digital infrastructure. However, in the Republic of Moldova, this interconnectivity also creates interdependencies and vulnerabilities to emerging threats that must be managed at the national level. Improving cybersecurity and protecting critical information infrastructures are essential for the nation's security and economic well-being – especially during the global transition to the digital economy and the information society.

At the same time, harmonizing legislation facilitates integration into the European energy system and access to funding programs and international cooperation. In this regard, our state has made progress in aligning its legislation with European standards in the fields of environment and energy. Among these achievements is the development of a Monitoring, Reporting, and Verification (MRV) system for greenhouse gas emissions, which represents an important step in achieving the country's climate goals.

On our path towards the European Union, we are witnessing a very important shift in mentality: Moldova no longer wants to be just a country that receives aid, but a state that actively contributes to the region's stability. Our participation in international peace missions and alignment with European standards are the only ways to achieve a stable economy and a protected democracy.

Therefore, we must recognize that strengthening the defense system is a process that never stops. We are constantly challenged to find a balance between the neutrality enshrined in the Constitution and the need to have modern, effective defense. Our success will depend on how well the security institutions collaborate with each other. Only by working hand in hand can these institutions ensure that the Republic of Moldova remains a point of stability on the edge of Europe, capable of defending its sovereignty against any type of attack, whether with conventional weapons or through hidden (hybrid) methods.

The analysis of the historical journey and current risks highlights the need for profound reform, oriented towards resilience and technological modernization.

An absolute priority is the strengthening of the digital capabilities of the security structures, particularly through the modernization of the technical units within the Intelligence and Security Service (SIS) and the Ministry of Internal Affairs (MAI). The creation of an integrated national cyber incident response center would ensure the protection of state databases and the banking system, thus preventing the risk of an internal shutdown caused by hybrid attacks on democratic processes.

In parallel, the Republic of Moldova must fully assume its role as a reliable partner in the region, transforming from a consumer of assistance into a state that actively contributes to European security. This objective requires more intense participation in European Union peace missions, which necessitates aligning the equipment and training of security institutions with international interoperability standards.

All these efforts will only be truly effective if bureaucratic barriers between institutions are eliminated through the creation of a National Rapid Reaction Protocol. Genuine collaboration, based on real-time information sharing between the SIS, the MAI, and the National Army, will allow the state to function as a unitary mechanism, capable of facing the hybrid and geopolitical challenges of the present.

Bibliographical references

1. Albu N., Mija V., Mîrzac E., Sandu S. National Security Policy of the Republic of Moldova: Premises for a New Strategy, Chișinău, 2023/02. Available: https://pisa.md/wp-content/uploads/2023/02/2_Politica-de-securitate-nationala-a-RM_premize-pentru-o-noua-strategie-1.pdf (Accessed 21.03.2026).
2. Bencheci M., Hîrbu D. The Political Security of the Republic of Moldova in the Era of Hybrid Threats, carried out by the Institute of Legal, Political and Sociological Research of the State University of Moldova, p.164. Available: https://ibn.idsi.md/sites/default/files/imag_file/162-174_2.pdf (Accessed 20.03.2026).
3. Carp S., Chirtoacă I. Military Traditions in Building Legal Norms and Forming National Consciousness. Chișinău, 2018, ISBN 978-9975-3163-3-0, p.444, (p.508).
4. Connecting the World and Beyond, National Strategies. Available: https://www.itu.int/en/ITU-D/Cybersecurity/Pages/cybersecurity-national-strategies.aspx (Accessed 18.03.2026).
5. Constitution of the Republic of Moldova, adopted on July 29, 1994. Official Gazette No.1 of August 13, 1994. Published: November 13, 2024 in the Official Gazette No.466, Art.635. Available: https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro# (Accessed 25.03.2026).
6. Costaș I. (2012). Transnistria: 1989-1992. An Unwritten History. Bucharest: Editura RAO, 548p. ISBN 978-606-609-330-9. Available: https://ru.scribd.com/document/373372215/vdocuments-site-transnistria-1989-1992-i-costas-pdf (Accessed 25.03.2026).
7. Decision No.153 of July 15, 2011 on the approval of the National Security Strategy. Published: October 14, 2011 in the Official Gazette No.170-175, Art.499. Repealed by Government Decision No.391 of December 15, 2023, Official Gazette 17-19/January 17, 2024, Art.28; in force from January 17, 2024. Available: https://www.legis.md/cautare/getResults?doc_id=141525&lang=ro# (Accessed 25.03.2026).
8. Decision No.22 of the Joint Sitting of the Senate and the Chamber of Deputies of June 30, 2020. In: Official Gazette, Part I, No.574 of July 1, 2020. National Defense Strategy of the Country for the Period 2020-2024: "Together for a Safe and Prosperous Romania in a World Marked by New Challenges", p.26, Bucharest. Available: https://www.presidency.ro/files/userfiles/Documente/Strategia_Nationala_de_Aparare_a_Tarii_2020_2024.pdf (Accessed 20.03.2026).
9. Decree of the President of the Republic of Moldova No.11 of January 27, 1992 on the Protection Service of the President. Current: Law No.134 of June 13, 2008 on the State Protection and Guard Service. Published: December 31, 2015 in the Official Gazette No.361-369, Art.673. Available: https://www.legis.md/cautare/getResults?doc_

id=147928&lang=ro# (Accessed 22.03.2026).
10. Decree of the President of the Republic of Moldova No.193 of September 3, 1991 on the establishment of the Armed Forces.
11. Gribincea N. The Carabinieri Troops: Historical Pages. Chișinău: Editura Ministerului Afacerilor Interne. 2011, Available: https://ibn.idsi.md/sites/default/files/imag_file/Recenzii_1_0.pdf (Accessed 25.03.2026).
12. Juc V. The Common Foreign and Security Policy of the European Union. In: Quarterly Scientific Journal (Problems of Political Analysis), 2018, No.1 (LXXX), p.103, ISSN 1812-2566. Available: https://uspee.md/wp-content/uploads/2019/04/M80.pdf (Accessed 20.03.2026).
13. Law No.134 of June 13, 2008 on the State Protection and Guard Service. In: Official Gazette No.361-369 of 31.12.2015, Art.673. Available: https://www.legis.md/cautare/getResults?doc_id=147928&lang=ro# (Accessed 22.03.2026).
14. Law No.416-XII of December 18, 1990 on the Police. Currently repealed and replaced by modern laws reforming the Ministry of Internal Affairs. In: Official Gazette No.42-47 of 01.03.2013, Art.145. Available: https://www.vertic.org/media/National%20Legislation/Moldova/MD_Law_416_Police.pdf (Accessed 20.03.2026).
15. Law No.753-XIV of November 16, 1999 on the Intelligence and Security Service of the Republic of Moldova. Currently repealed by Law No.136 of June 8, 2023. In: Official Gazette 204-207/June 21, 2023, Art. 358; in force from July 21, 2023. Published: December 31, 1999 in the Official Gazette No.156, Art.764. Available: https://www.legis.md/cautare/getResults?doc_id=63033&lang=ro (Accessed 22.03.2026).
16. Law No.806-XII of December 12, 1991 on the Carabinieri Troops. Currently repealed by Government Decision No.332 of July 18, 2019 on the organization and functioning of the General Inspectorate of Carabinieri. In: Official Gazette No.241-243, Art.439.
17. Legislation of the Republic of Moldova in the Field of Energy, Aligned with European Union Standards. Available: https://energie.gov.md/ro/content/legislatia-republicii-moldova-domeniul-energiei-aliniata-la-standardele-uniunii-europene (Accessed 18.03.2026).
18. Manningham-Buller E. Traditional tasks of an internal security service and its position within government institutions - U.K. presentation. Report of the British Security Service, at the Conference for NACC/PfP Security Officials held in Brussels. May 2006. Available: https://assets.publishing.service.gov.uk/media/5a7c470140f0b62dffde1050/isc_terrorist_attacks_7july_report.pdf (Accessed 16.03.2026).
19. Manole D. The European "new neighborhood" policy and its impact on the Republic of Moldova. Moldoscopie (Problems of Political Analysis). USM, 2004. In: Quarterly Scientific Journal, No.2 (XXVI), p.155. ISSN 1812-2566. Available: https://uspee.md/wpcontent/uploads/2019/04/M26.pdf (Accessed 16.03.2026).
20. Petrelli Fr. President of the Italian Union of Criminal Chambers. Published on November 5, 2024 in the newspaper l'Unità with the title "Harmful and Useless: The 'Scam' of the Security Package". ISSN 2704-8098. Available: https://www.sistemapenale.it/it/articolo/petrelli-sicurezza-democrazia-e-costituzione?out=print (Accessed 24.03.2026).
21. Săvulescu Ș., Ivan L., Gîrdan E. et al. Strategic Analysis. Bucharest, Romania, Editura MAI, 2022, p.45, (p.311), ISBN 978-973-745-200-9.

CZU 343.14 **DOI: https://doi.org/10.5281/zenodo.20810421**

SUBJECTS OF EVIDENCE ADMINISTRATION IN THE DIGITAL ERA: BALANCING INVESTIGATIVE EFFICIENCY AND FAIR TRIAL GUARANTEES

Monica DANILIUC,
PhD Student,
General Secretary, Town Hall of Broșteni, Suceava County, Romania
ORCID: 0009-0005-2027-2753

Abstract

The administration of evidence constitutes the core of criminal proceedings, through which judicial truth is established and the right to a fair trial, as enshrined in the jurisprudence of the European Court of Human Rights, is ensured. Over recent decades, the legal frameworks of the Republic of Moldova and Romania have evolved by expanding the category of subjects involved in the collection, preservation, and valorisation of evidence, including investigative bodies, specialised structures such as Asset Recovery Agencies, and investigative officers.

Although this diversification is aimed at enhancing efficiency and specialisation, it generates risks of overlapping competences and of evidence being administered outside the procedural framework, with direct consequences for the integrity of evidence and the fundamental rights of the parties.

In the context of technological progress, digitalisation, and the development of advanced forensic methods, the topic becomes even more relevant: subjects involved in evidence administration must operate within strict legal boundaries to ensure verifiable evidentiary chains (chain of custody), legality, and procedural fairness. This study analyses the national and European regulatory frameworks, identifies legislative gaps, examines relevant case-law from the Republic of Moldova, Romania, and the ECHR, and proposes solutions for optimising cooperation between procedural actors, aligned with European standards and international best practices.

The research findings highlight the necessity of a balance between investigative efficiency and the protection of fundamental rights, offering de lege ferenda recommendations for harmonising competences, strengthening judicial control, and integrating modern technologies into evidence administration. This approach contributes to preventing procedural errors and increasing public confidence in the criminal justice system, being relevant both for academics and practitioners in the field of crime prevention and control.

Keywords: evidence administration, procedural subjects, fair trial, digitalisation, chain of custody, comparative law, European standards.

SUBIECȚII ADMINISTRĂRII PROBELOR ÎN ERA DIGITALĂ: ECHILIBRU ÎNTRE EFICIENȚA INVESTIGATIVĂ ȘI GARANȚIILE PROCESULUI ECHITABIL

Abstract

Administrarea probelor constituie nucleul procesului penal, prin intermediul căruia se realizează adevărul judiciar și se asigură respectarea dreptului la un proces echitabil, consacrat de jurisprudența Curții Europene a Drepturilor Omului. În ultimele decenii, cadrul normativ din Republica Moldova și România a evoluat prin extinderea sferei subiecților implicați în colectarea, păstrarea și valorificarea probelor, incluzând organe de constatare, structuri specializate precum Agenția de Recuperare a Bunurilor Infracționale și ofițeri de investigații. Această diversificare, deși orientată spre eficiență și specializare, generează riscuri de suprapunere a competențelor și de administrare a probelor în afara cadrului procesual, cu efecte directe asupra integrității probelor și drepturilor fundamentale ale părților.

În contextul progresului tehnico-științific, digitalizării și dezvoltării metodelor criminalistice avansate, tema devine și mai actuală: subiecții administrării probelor trebuie să acționeze în limite precise, pentru a asigura trasee probatorii verificabile (chain of custody), legalitate și loialitate procesuală. Studiul propus anali-

zează cadrul normativ național și european, identifică lacunele legislative, examinează jurisprudența relevantă din Republica Moldova, România și CEDO, și propune soluții de optimizare a cooperării între subiecți, aliniate la standardele europene și bunele practici internaționale.

Rezultatele cercetării evidențiază necesitatea unui echilibru între eficiența investigativă și protecția drepturilor fundamentale, oferind recomandări de lege-ferenda pentru armonizarea competențelor subiecților, consolidarea controlului judiciar și integrarea tehnologiilor moderne în administrarea probelor. Această abordare contribuie la prevenirea erorilor procesuale și la creșterea încrederii publice în sistemul de justiție penală, fiind relevantă atât pentru teoreticieni, cât și pentru practicieni în domeniul prevenirii și combaterii criminalității.

Cuvinte-cheie: administrarea probelor, subiecți procesuali, proces echitabil, digitalizare, chain of custody, legislație comparată, standarde europene.

Introduction. Criminal proceedings represent the legal mechanism through which the state responds to the commission of an offence, in order to restore the rule of law and protect fundamental social values. Within this framework, the administration of evidence plays a central role, as it is the instrument through which judicial authorities reconstruct the factual situation and establish judicial truth. Doctrine has consistently emphasised that criminal proceedings cannot be conceived outside evidentiary activity, which forms the foundation of any judicial decision.

Traditionally, evidence administration was limited to classical means—witness testimony, documents, expert reports, or material evidence. However, the evolution of contemporary society, characterised by accelerated digitalisation and the development of information technologies, has profoundly transformed the nature of evidence used in criminal proceedings. A significant proportion of human activity now takes place in the digital environment, inevitably leading to the emergence of new types of evidence—electronic or digital evidence—which require a distinct legal approach.

This shift is not merely technical; it has profound implications for the architecture of criminal proceedings. Whereas procedural roles were previously relatively well-defined, digitalisation has led to a significant expansion of the range of subjects involved in evidence administration. Alongside traditional actors—investigative bodies and prosecutors—specialised structures, IT experts, and auxiliary institutions are increasingly involved, which may generate coordination difficulties and risks of fragmentation of evidentiary activity.

From a doctrinal perspective, Romanian legal scholarship has emphasised that evidence must be administered in strict compliance with the principles of legality and procedural fairness, any deviation potentially affecting the validity of the entire judicial process. Similarly, Moldovan doctrine stresses the essential nature of admissibility, highlighting that only lawfully obtained and properly administered evidence may form the basis of a judicial decision.

A key concept in contemporary evidentiary analysis is the “chain of custody”, which requires complete and continuous documentation of the evidentiary path from collection to presentation in court. In the case of digital evidence, this concept becomes essential due to the volatile and easily alterable nature of electronic data. Failure to ensure strict control over this chain may compromise evidentiary value and affect the right to a fair trial.

Moreover, the development of cybercrime and its transnational nature creates additional challenges for evidence administration. Access to data stored in foreign jurisdictions, international cooperation, and differences between national legal systems complicate the process of collecting and using digital evidence. Consequently, the need for

legislative harmonisation at both European and international levels becomes evident.

In its jurisprudence, the European Court of Human Rights has consistently held that the use of evidence must comply with fair trial guarantees, including the rights of defence and the principle of equality of arms. Thus, not only the legality of obtaining evidence is relevant, but also the manner in which it is administered and assessed within proceedings.

Therefore, this study addresses a highly complex and topical issue at the intersection of criminal procedural law, information technology, and fundamental rights protection. The objective is to analyse the subjects involved in evidence administration in the digital era, identify existing dysfunctions, and formulate de lege ferenda proposals aimed at ensuring a real balance between investigative efficiency and fair trial guarantees.

Methods and materials applied. The scientific approach of the present research is based on the necessity of analysing a complex issue situated at the intersection of criminal procedural law, information technology, and fundamental rights protection. In this context, the methodology employed is pluralistic, combining classical legal research methods with instruments specific to the analysis of contemporary legal phenomena.

The research uses a mixed legal methodology: doctrinal, normative, comparative, and jurisprudential.

The following sources were examined:

- Criminal Procedure Code of Romania;
- Criminal Procedure Code of the Republic of Moldova;
- Case-law of the European Court of Human Rights (Article 6 ECHR);
- Budapest Convention on Cybercrime (2001);
- Regulation (EU) 2023/1543 and Directive (EU) 2023/1544;
- Specialised academic literature on digital forensics and electronic evidence.

Also, this methods used in literature, especially in legal digital criminalistic and electronic proves [2].

1. Doctrinal research method. A first pillar of the research consists of doctrinal analysis, carried out through the study of reference works in the field of criminal procedural law, both in Romania and the Republic of Moldova. This method allowed the identification of fundamental concepts regarding evidence administration, the role of procedural subjects, and fair trial guarantees, as well as the construction of the theoretical framework necessary for the development of the topic.

Accordingly, authoritative works of Romanian doctrine were analysed, emphasising evidence as a central element of criminal proceedings and highlighting the active role of judicial authorities in establishing the truth. In parallel, Moldovan legal literature provided a complementary perspective, stressing the admissibility of evidence and the protection of procedural rights.

The doctrinal method also enabled the identification of theoretical gaps in the treatment of digital evidence, particularly regarding the integration of the chain of custody concept into national legal systems.

2. Legislative analysis method. The research involved a detailed examination of the applicable legal framework governing evidence administration, including the Criminal Procedure Code of Romania and the Criminal Procedure Code of the Republic of Moldova, with particular focus on provisions relating to the collection, administration, and assessment of evidence.

This method allowed the identification of how the legislator regulates the competences of procedural subjects and the limits within which they may act in gathering and using evidence. At the same time, the analysis revealed that current regulations are pre-

dominantly designed for traditional forms of evidence and are insufficiently adapted to the specificities of digital evidence.

In addition, relevant European legal instruments were examined, in particular Regulation (EU) 2023/1543 and Directive (EU) 2023/1544, which establish modern mechanisms for obtaining and preserving electronic evidence in criminal matters, reflecting a clear trend towards European harmonisation.

3. Comparative law method. Given the transnational nature of cybercrime and digital evidence, the research employed the comparative law method by analysing legislative and doctrinal solutions from different legal systems.

The study primarily considered:

- The legal systems of Romania and the Republic of Moldova as the direct object of research;
- European standards developed through the jurisprudence of the European Court of Human Rights;
- Relevant international instruments, such as the Budapest Convention on Cybercrime.

This method allowed the identification of regulatory models and best practices in the field of digital evidence administration, as well as the highlighting of differences between systems, particularly regarding the role of procedural subjects and procedural safeguards.

4. Jurisprudential analysis method. An essential tool of the research is the analysis of case-law, particularly that developed by the European Court of Human Rights, which has established relevant standards concerning the use of evidence in criminal proceedings.

This method highlighted that, from the ECHR perspective, not only the legality of obtaining evidence is relevant, but also the overall fairness of the proceedings, including the manner in which evidence is administered and challenged by the parties.

Moreover, the analysis of national case-law revealed a tendency of courts to sanction non-compliance with procedural rules governing evidence administration, particularly in cases involving technically or digitally obtained evidence.

5. Interdisciplinary analysis method. Given the technical nature of digital evidence, the research also adopted an interdisciplinary approach, integrating elements of digital forensic science and legal informatics.

Thus, concepts such as data integrity, chain of custody, and methods of collection and preservation of electronic data were analysed.

This approach enabled a better understanding of the practical limitations faced by judicial authorities and the necessity of cooperation with IT specialists in the proper administration of digital evidence.

6. Research limitations. The study takes into account certain limitations, mainly determined by the rapid evolution of regulations in the field of electronic evidence and the lack of uniform international standards.

Furthermore, the technical nature of digital evidence implies dependence on technological progress, which means that legal and doctrinal solutions are in constant development. In this context, the conclusions of the research should be regarded as adaptable to future normative and technological changes.

I. Subjects of Evidence Administration in the Digital Era. The transformations generated by digitalisation have produced significant changes in the structure and functioning of criminal proceedings, particularly with regard to the subjects involved in evidence

administration. While, in the traditional conception, this activity was predominantly carried out by criminal investigation bodies and the prosecutor, in the current context there is a clear expansion of the range of procedural actors, determined by the technical complexity of evidence and the need for specialisation.

This diversification raises essential issues concerning the delimitation of competences, the legality of evidence administration, and the respect for procedural guarantees.

1.1. Criminal investigation bodies: traditional role and transformations in the digital context. These bodies remain the primary procedural actors; however, their role is evolving towards the coordination of interdisciplinary evidentiary activity in the digital environment.

In the architecture of criminal proceedings, criminal investigation bodies represent the main active subject in the investigative phase, being responsible for the collection and administration of evidence. Traditional doctrine has emphasised that they are obliged to carry out evidentiary activities in order to establish the truth, both in favour of and against the suspect or defendant.

In the context of digitalisation, their role has significantly expanded. Investigation activities no longer involve only the administration of traditional evidence, but also the identification and collection of electronic data, the use of advanced technical tools, and cooperation with IT and digital forensic specialists.

This evolution marks a paradigm shift, in which the criminal investigation body becomes a coordinator of interdisciplinary activity, requiring additional competences and increased responsibility in managing digital evidence.

At the same time, the risk of excessive dependence on technical expertise arises, which may affect the authority's capacity to effectively control the evidentiary process.

1.2. The prosecutor: guarantor of legality and coordinator of evidentiary activity. The prosecutor acts as the guarantor of legality and coordinator of evidentiary activity, being responsible for verifying compliance with the conditions of admissibility of evidence.

The prosecutor holds a central position in evidence administration, being both the holder of the prosecution function and the guarantor of procedural legality. Doctrine has emphasised that the prosecutor is not only a party to the accusation but also a procedural subject bound to ensure the protection of fundamental rights.

In the context of digital evidence, the prosecutor's role becomes even more complex, involving the coordination of investigative bodies, the authorisation of intrusive evidentiary measures (such as searches of computer systems or interceptions), and the verification of the legality of obtaining and administering evidence.

The prosecutor must also ensure compliance with the principle of procedural fairness, particularly in situations where evidence is obtained through sophisticated technical means.

In practice, however, the expansion of procedural actors involved in evidence collection may lead to a reduction in the effective control exercised by the prosecutor.

1.3. Fact-finding bodies and specialised structures: expansion of procedural subjects. The extension of competences to administrative bodies and specialised institutions creates risks of functional overlap and dilution of procedural control.

A defining feature of recent developments, particularly in the Republic of Moldova, is the extension of evidentiary competences to additional categories of subjects, such as fact-finding bodies, state control authorities, investigative officers, and specialised institutions (e.g., Asset Recovery Agencies).

This expansion has been justified by the need to increase investigative efficiency and to make use of specialised technical expertise. However, doctrine has highlighted significant risks generated by this diversification, including overlapping competences, lack of effective coordination, and the administration of evidence outside the criminal procedural framework.

In the absence of clear regulatory boundaries, evidentiary activity may become fragmented, affecting the integrity of evidence and its admissibility before the court.

1.4. Specialists and experts in the digital field: necessity and vulnerability.

These actors play an essential role in analysing digital evidence, but their intervention must remain strictly limited so as not to replace judicial authorities.

A specific feature of the digital era is the increasing involvement of IT specialists and digital forensic experts in evidence administration. They are indispensable for extracting electronic data, analysing digital devices, and interpreting digital evidence.

However, their involvement raises sensitive procedural issues. First, their legal status and the limits of their intervention must be clearly defined. Second, there is a risk that technical findings may be accepted without rigorous judicial scrutiny, potentially affecting the principle of free evaluation of evidence.

Moreover, the technical nature of digital evidence may create an imbalance between prosecution and defence, particularly where access to technical expertise is unequal.

1.5. The court: role in evaluating digital evidence. The court is required to verify the legality and reliability of evidence, but its assessment is challenged by the technical complexity of digital material.

Although evidence is primarily administered during the investigation phase, the court plays an essential role in verifying its legality and probative value.

In the context of digital evidence, courts face additional challenges, including:

- The technical complexity of evidence;
- Difficulties in verifying authenticity and integrity of data;
- The need to assess technical expert reports.

According to European jurisprudence, courts must ensure respect for the principle of equality of arms and allow effective challenge of evidence by the parties.

In the absence of adequate technological training, courts risk placing excessive reliance on expert conclusions, without sufficient critical analysis.

1.6. The need for clear delimitation of competences: a prerequisite of fair trial. The analysis of procedural subjects reveals a clear trend towards diversification and specialisation. However, this evolution must be accompanied by a clear delimitation of competences and effective control mechanisms.

Clear regulatory boundaries are necessary to prevent the undermining of criminal procedural fairness. In the absence of precise rules, there is a risk that evidence will be administered outside the legal framework, that fundamental rights will be affected, and that the criminal process will become inequitable.

Therefore, it is necessary to strengthen the role of the prosecutor as guarantor of legality and to reinforce judicial control over evidentiary activity, particularly in relation to digital evidence.

Discussions and results obtained. The analysis of subjects involved in evidence administration in the digital era reveals a set of structural dysfunctions arising from the interaction between accelerated technological development and legal frameworks that remain partially anchored in traditional evidentiary paradigms.

Although the expansion of procedural actors is formally justified by considerations

of efficiency and specialisation, the empirical and doctrinal findings indicate that such diversification produces systemic side effects on both the coherence of criminal proceedings and the substantive guarantees of procedural fairness.

2.1. Fragmentation of competences and the risk of extra-procedural evidence administration. A primary finding of the research is the emergence of a pronounced fragmentation of evidentiary competences. The increasing involvement of multiple institutional actors—fact-finding bodies, investigative officers, and specialised administrative structures—generates a diffusion of responsibility within the evidentiary chain.

In practice, this institutional plurality often results in weakened hierarchical coordination and an attenuated capacity of procedural oversight, particularly on the part of the prosecutor. This fragmentation becomes particularly problematic when evidentiary activities are performed prior to, or outside, the formal procedural framework, thereby raising serious concerns regarding admissibility, traceability, and defence rights.

From a systemic perspective, such developments risk undermining the epistemic unity of the criminal process, transforming evidence into a composite and partially uncontrollable construct.

2.2. Digital evidence vulnerabilities and the epistemology of the chain of custody. Digital evidence introduces a distinct vulnerability profile, fundamentally different from traditional evidentiary forms. Its volatility, replicability, and susceptibility to undetectable alteration require a procedural architecture grounded in strict standards of integrity assurance.

Within this context, the chain of custody ceases to be a merely technical requirement and becomes a normative guarantee of evidentiary legitimacy. The absence of uniform regulatory standards for documenting the lifecycle of digital evidence significantly increases the risk of contamination, manipulation, or loss of evidentiary authenticity.

Consequently, evidentiary reliability in the digital environment is no longer a static attribute but a continuously constructed procedural status, dependent on verifiable technical and institutional continuity.

2.3. Structural imbalance between prosecution and defence. The research further identifies a persistent asymmetry between prosecution and defence in access to technical infrastructure, forensic expertise, and digital analytical tools.

While investigative authorities benefit from institutionalised access to specialised capabilities, the defence is frequently placed in a structurally disadvantaged position, particularly in relation to independent verification of digital evidence.

This asymmetry affects the substantive content of the principle of equality of arms, transforming it from a formal procedural guarantee into a potentially unevenly realised safeguard. In adversarial terms, this imbalance risks distorting the dialectical equilibrium upon which the fairness of criminal proceedings is premised.

2.4. Judicial assessment of digital evidence and epistemic dependency. Courts are increasingly confronted with evidentiary materials whose probative value is inseparable from technical interpretation. This structural complexity generates a form of epistemic dependency on expert conclusions, particularly in relation to authenticity, integrity, and metadata analysis.

Such dependency may lead to a gradual contraction of judicial epistemic autonomy, manifested either through excessive deference to expert findings or through reduced capacity for independent verification of technical evidence.

In the absence of specialised judicial literacy in digital forensics, the principle of free evaluation of evidence risks being transformed into a formally preserved but substantive-

ly constrained guarantee.

2.5. Cybercrime and the transnationalisation of evidentiary constraints. The expansion of cybercrime introduces a transnational evidentiary dimension characterised by jurisdictional fragmentation, delayed cross-border cooperation, and divergent standards of admissibility.

These structural asymmetries significantly complicate the acquisition, preservation, and validation of digital evidence across jurisdictions. As a result, criminal proceedings increasingly depend on international legal cooperation mechanisms whose efficiency is often conditioned by procedural heterogeneity.

This context underscores the necessity of normative convergence at European and international levels, particularly in relation to electronic evidence admissibility and cross-border data access.

2.6. Reconfiguration of procedural roles in the digital evidentiary paradigm. The cumulative findings of the research suggest that the traditional model of evidence administration is no longer fully adequate to the epistemic and technological realities of digital criminality.

A reconfiguration of procedural roles is therefore required, based on three interdependent axes:

(i) Consolidation of the prosecutor's role as guarantor of legality and evidentiary coherence;

(ii) Normative clarification of competences among procedural and auxiliary actors;

(iii) Institutionalisation of continuous technical training for all procedural subjects involved in digital evidence handling.

Such reconfiguration is not merely organisational, but structural, reflecting a transition from a linear evidentiary model to a distributed and technologically mediated evidentiary ecosystem.

2.7. Synthesis of research findings. The comprehensive analysis undertaken reveals several foundational conclusions regarding the contemporary architecture of evidence administration in digital criminal proceedings.

First, the progressive expansion of procedural subjects contributes to a redefinition of the evidentiary system; however, in the absence of precise normative boundaries, this expansion generates risks of competence fragmentation, diffusion of responsibility, and weakened legal oversight.

Second, the intrinsic nature of digital evidence exposes systemic vulnerabilities related to data volatility, replicability, and technological dependency, thereby requiring strengthened procedural safeguards, particularly through the standardisation of chain of custody mechanisms.

Third, a structural imbalance persists between prosecution and defence in terms of access to technical resources and forensic expertise, which may compromise the effective equality of arms within adversarial proceedings.

Fourth, judicial authorities face increasing difficulties in independently assessing digital evidence due to its technical complexity, resulting in a heightened reliance on expert testimony and potential attenuation of judicial epistemic autonomy.

Finally, the accelerating evolution of cybercrime, characterised by transnationality and technological sophistication, necessitates continuous adaptation of both normative frameworks and institutional cooperation mechanisms at European and international levels.

From a systemic perspective, these dynamics reveal a fundamental tension between the classical architecture of criminal proceedings—grounded in immediacy and direct ev-

identiary control—and the emerging digital paradigm, in which evidence is algorithmically mediated, distributed, and technologically contingent.

Conclusions. The analysis conducted on the subjects of evidence administration in the digital era confirms that criminal proceedings are undergoing a profound structural transformation, driven by the impact of technology on the traditional mechanisms of justice delivery. Within this context, evidence administration can no longer be conceptualised within classical procedural parameters, as it requires a systemic reconceptualisation aligned with the complexity and dynamics of digital environments.

A first essential conclusion is that the expansion of the category of subjects involved in evidence administration, although justified by imperatives of efficiency and functional specialisation, generates significant risks to the coherence and internal unity of criminal proceedings. The diversification of institutional actors—particularly through the involvement of fact-finding bodies, specialised structures, and ancillary administrative entities—leads to a fragmentation of competences, which may weaken effective judicial control over the legality and regularity of evidentiary activities.

In this context, the central role of the prosecutor must be reaffirmed and substantially strengthened. Beyond the formal status of a party to the criminal action, the prosecutor must be understood as the genuine guarantor of the legality of evidence administration. This function requires the exercise of continuous, effective, and substantive oversight over the entire evidentiary process, including activities conducted by auxiliary or specialised actors.

A second fundamental finding concerns the intrinsic vulnerability of digital evidence. The volatile, replicable, and technologically dependent nature of electronic data necessitates the establishment of stringent procedural safeguards regarding integrity, authenticity, and traceability. In the absence of a clear and coherent regulatory framework governing the chain of custody, the probative reliability of digital evidence is exposed to systemic risks, with direct implications for the establishment of judicial truth.

Furthermore, the research highlights a structural imbalance between prosecution and defence in terms of access to technical resources, digital infrastructure, and specialised forensic expertise. This asymmetry has the potential to affect the substantive content of the principle of equality of arms, as recognised both in domestic procedural law and in the jurisprudence of the European Court of Human Rights, thereby generating functional inequality in the ability to challenge and verify digital evidence.

Regarding judicial authorities, it has been observed that courts are confronted with genuine epistemic difficulties in the assessment of digital evidence, arising from its high technical complexity and frequent reliance on expert evaluations. In the absence of adequate training in digital technologies, there is a risk that judicial reasoning may become excessively deferential to expert findings, thereby affecting the principle of free evaluation of evidence and the autonomy of judicial conviction.

Additionally, the transnational nature of cybercrime significantly amplifies the challenges associated with evidence administration, highlighting the need for strengthened mechanisms of international judicial cooperation and deeper legislative harmonisation at European level, in order to ensure an effective and coherent criminal justice response to digital criminal phenomena.

On the basis of these findings, several de lege ferenda orientations emerge as necessary: the explicit regulation of the chain of custody for digital evidence; the strict delimitation of competences among procedural subjects; the consolidation of the prosecutor's role as supervisory authority over evidentiary activities; the establishment of effective

safeguards ensuring equality of arms through access to independent technical expertise; the continuous professional specialisation of procedural actors in digital forensics; the harmonisation of national legislation with European standards on electronic evidence; and the development of efficient international cooperation mechanisms enabling rapid and lawful access to cross-border digital evidence.

In conclusion, achieving a genuine and functional equilibrium between the requirements of investigative efficiency and the imperatives of fair trial guarantees in the context of criminal procedural digitalisation requires moving beyond a purely incremental or corrective approach to legal reform. It necessitates a systemic reconceptualisation of evidentiary mechanisms, grounded in a coherent model of juridical governance of informational evidence.

Such a paradigm shift entails the transition towards an integrated evidentiary architecture capable of ensuring both the effective combating of criminality and the substantive, not merely formal, protection of fundamental rights, in full alignment with the standards of the European Convention on Human Rights.

Bibliographical references

1. Brendel M. Chain of Custody in Digital Forensics, Springer, 2020.
2. Casey, E. Digital Evidence and Computer Crime, Academic Press, 2011.
3. Dolea, I. Criminal Procedure Law, Chișinău, Cartier Juridic, 2005.
4. Dolea, I. The Rights of the Person in Criminal Evidence Proceedings, Chișinău, Cartea Juridică, 2009.
5. Kerr, O. S. Searches and Seizures in a Digital World. Harvard Law Review, vol. 119, 2005.
6. Mateuț, Gh. Treatise on Criminal Procedure. General Part, vol. I, C.H. Beck, București, 2019.
7. Neagu, N. Treatise on Criminal Procedure, Universul Juridic, București, 2020. Theodoru, G., Treatise on Criminal Procedural Law, 3rd ed.,, Hamangiu, București, 2013.
8. Udroiu, M. Criminal Procedure. General Part, 6th ed., C.H. Beck, București, 2023.
9. Zamfir, V. The Institution of Accusation in Criminal Proceedings, Chișinău, Lexon, 2018.
10. Romanian Criminal Procedure Code. Law No.135/2010. Bucharest: Official Gazette of Romania, 2010.
11. Criminal Procedure Code of the Republic of Moldova. No.122-XV of March 14, 2003. Chisinau: Official Monitor of the Republic of Moldova, 2003.
12. Council of Europe. Convention on Cybercrime (Budapest Convention), 23 November 2001.
13. Regulation (EU) 2023/1543 of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence
14. Directive (EU) 2023/1544 on the designation of legal representatives for the gathering of electronic evidence.
15. European Court of Human Rights, Article 6 – Right to a Fair Trial (criminal limb), Case-Law Guide.

CZU 343.272(478) **DOI: https://doi.org/10.5281/zenodo.20811698**

REGULATION OF SPECIAL AND EXTENDED CONFISCATION IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF MOLDOVA

Veaceslav URSU,
PhD, University Professor,
Department of Criminal Law and Criminology,
"Ștefan cel Mare" Academy of the Ministry of the Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-0696-4391

Abstract

The developed article constitutes a multidimensional analysis of the institutions of special confiscation (Art. 106 CC) and extended confiscation (Art. 106[1] CC) within the criminal legislation of the Republic of Moldova, evaluating their degree of alignment with European standards. The author highlights the transition from a paradigm focused on punishing the individual toward one centered on the recovery of criminal proceeds, which is considered a strategic tool of criminal policy.

The comparative analysis emphasizes the fundamental distinctions between these two security measures: while special confiscation targets assets with a direct link to the offense (in rem), extended confiscation relies on the presumption of the illicit nature of wealth that is disproportionate to licit income, covering assets acquired within the last 5 years. A central role is attributed to the Criminal Assets Recovery Agency (CARA) in conducting parallel financial investigations using the "follow the money" method to identify beneficial owners and assets hidden through intermediaries.

The study identifies critical barriers in judicial practice, such as the inconsistent interpretation of the standard of proof, the low solvency of convicted individuals, and the courts' reluctance to apply the "partial reversal" of the burden of proof. Finally, lex ferenda proposals are formulated, including the introduction of civil forfeiture (non-conviction based), the specialization of judicial panels, and the expansion of the list of predicate offenses, partially inspired by the American RICO model.

Keywords: special confiscation, extended confiscation, CARA (Criminal Assets Recovery Agency), parallel financial investigation, security measures, licit income, asset disproportion, confiscation by equivalent, intermediaries.

REGLEMENTAREA CONFISCĂRII SPECIALE ȘI EXTINSE ÎN LEGISLAȚIA PENALĂ A REPUBLICII MOLDOVA

Abstract

Articolul elaborat constituie o analiză multidimensională a instituțiilor confiscării speciale (art. 106 CP) și confiscării extinse (art. 1061 CP) în legislația penală a Republicii Moldova, evaluând gradul de aliniere a acestora la standardele europene. Autorul evidențiază tranziția de la o paradigmă axată pe pedepsirea persoanei către una centrată pe recuperarea profitului infracțional, considerată un instrument strategic de politică penală.

Analiza comparativă subliniază distincțiile fundamentale dintre cele două măsuri de siguranță: în timp ce confiscarea specială vizează bunurile cu o legătură directă cu infracțiunea (in rem), confiscarea extinsă se bazează pe prezumția caracterului ilicit al averii disproporționate față de veniturile licite, acoperind activele dobândite în ultimii 5 ani. Un rol central este atribuit Agenției de Recuperare a Bunurilor Infracționale (ARBI) în desfășurarea investigațiilor financiare paralele prin metoda „follow the money" pentru a identifica beneficiarii reali și activele ascunse prin interpuși.

Studiul identifică bariere critice în practica judiciară, precum interpretarea neunitară a standardului de probațiune, solvabilitatea scăzută a condamnaților și reticența instanțelor de a aplica „inversarea parțială"

a sarcinii probei. În final, sunt formulate propuneri de lex ferenda, printre care introducerea confiscării civile (fără condamnare), specializarea completelor de judecată și extinderea listei infracțiunilor predicat, inspirate parțial din modelul american RICO.

Cuvinte-cheie: confiscare specială, confiscare extinsă, ARBI (Agenția de Recuperare a Bunurilor Infracționale), investigație financiară paralelă, măsuri de siguranță, venit licit, disproporție patrimonială, confiscare prin echivalent, interpuși.

Introduction. In the modern architecture of criminal law, the sanctioning paradigm has undergone a significant shift from punishing the individual toward "punishing" criminal profit. In a state governed by the rule of law that aspires to the integrity standards of the European Union, such as the Republic of Moldova, the efficiency of the repressive system is no longer measured solely by the number of prison sentences, but by the state's capacity to strip the offender of the proceeds of crime.

The recovery of assets derived from offenses represents today not only a measure to restore social equity, but also a strategic tool of criminal policy. In the Republic of Moldova, the evolution of the legislative framework has been marked by the need to align with international standards, particularly after the signing of the EU Association Agreement.

The institutions of special confiscation and extended confiscation, regulated by Articles 106 and 106[1] of the Criminal Code of the Republic of Moldova [1], represent the fundamental levers through which the restoration of social equity and the deterrence of corruption and organized crime are pursued.

However, the gap between the letter of the law and the reality of enforcement remains considerable, marked by methodological challenges, evidentiary difficulties, and an occasionally non-uniform jurisprudence. The mere existence of norms in the Criminal Code (Articles 106 and 106[1]) does not guarantee success if the application mechanisms are deficient.

The purpose of this article lies in the multidimensional analysis of special and extended confiscation mechanisms in the Republic of Moldova, evaluating the degree of compatibility of national legislation with the new European standards (Directive 2024/1260/EU) [2] and identifying the procedural barriers that prevent a high recovery rate of criminal assets in current judicial practice.

Research Objectives. To achieve the proposed goal, the following derived objectives were established:

- Conceptual delimitation of special confiscation from extended confiscation, highlighting their legal nature as security measures;
- Analysis of the conditions for applying extended confiscation through the prism of proving the disproportion between licit income and the wealth acquired by the convicted person;
- Evaluation of the role of the Criminal Assets Recovery Agency (CARA) in the process of identifying, tracking, and freezing assets under the control of intermediaries;
- Examination of recent national jurisprudence to detect recurrent reasons for rejecting confiscation motions and non-uniform interpretations by the courts;
- Formulation of *lex ferenda* proposals aimed at optimizing the confiscation process, including by analyzing the opportunity of introducing the civil forfeiture model (non-conviction based).

Research Strategy (Methodology). The research is based on a diversified methodological approach, designed to ensure the objectivity and rigor of the findings:

- **Logical and Analytical Method**: Used for interpreting the legal norms of the

Criminal Code and the Criminal Procedure Code, as well as for deconstructing the concepts of "licit income" and "assets resulting from criminal activity".

- **Comparative-Legal Method**: Applied by comparing the legislation of the Republic of Moldova with successful models from other jurisdictions, highlighting the strengths and gaps of the national system.
- **Method of Jurisprudential Observation**: Consists of the empirical study of rulings by the Supreme Court of Justice and courts of appeal from the 2023-2026 period to extract practical trends in applying confiscation.
- **Statistical Method**: Analysis of quantitative data provided by criminal investigation bodies (NAC, CARA) to evaluate the ratio between seized assets and those effectively confiscated through definitive sentences.
- **Prospective Method**: Used to foreshadow the evolution of the institution of confiscation in the context of the digitalization of the economy (virtual/crypto assets) and European integration.

Discussions and results obtained. I. Comparative Analysis: Special Confiscation (Art. 106 CC) vs. Extended Confiscation (Art. 106¹ CC).

1.1. Historical Evolution of the Analyzed Institutions. The evolution of confiscation institutions within the criminal legislation of the Republic of Moldova reflects the transition from a system focused strictly on the instruments of crime to a modern one, adapted to European standards for combating organized crime and corruption.

Special confiscation has been present since the adoption of the current Criminal Code (Law No.985/2002), which entered into force on June 12, 2003. In the original 2002 version of the Code, special confiscation was provided under Article 106. It was defined as a security measure consisting of the forced and free-of-charge transfer into state ownership of assets used in or resulting from the commission of offenses. Regarding the object of confiscation, emphasis was initially placed on: assets resulting from the commission of the offense, instruments used to commit the act, and assets that served to reward the offender.

Unlike special confiscation, ***extended confiscation*** is a much more recent institution, introduced to allow the state to recover assets that exceed a person's licit income, even if a direct link cannot be demonstrated between those assets and a specific offense. This was introduced by Law No. 326 of December 23, 2013, which entered into force on February 25, 2014. Through this reform, a new article was introduced into the Criminal Code — Art. 106¹ (Extended Confiscation), and its introduction was driven by the necessity of harmonizing national legislation with European Union norms (specifically Directive 2014/42/EU) and providing law enforcement bodies with more effective tools against the illicit accumulation of wealth.

Over time, both institutions have undergone modifications to clarify the application procedure. While the purpose of special confiscation is to eliminate profits obtained from a specific offense, including the means of the offense, the purpose of extended confiscation is to combat illicit enrichment and organized crime. In the first case, the state must prove the direct link to the proven offense and the criminal origin of what is subject to confiscation; in the second case, the link consists of the discrepancy between licit income and the actual wealth held by the subject, with the state having to demonstrate this disproportion so that the court is convinced that the assets derive from illicit activities.

Recently, the legal framework [3; 4] was adjusted to facilitate the application of these measures even in the absence of a conviction sentence under certain conditions (civil forfeiture or forfeiture based on reasonable suspicion evidence within the criminal

process), consolidating the role of the Criminal Assets Recovery Agency (CARA).

In conclusion, while special confiscation is a "traditional" institution of the 2002 Criminal Code, extended confiscation emerged as a modern legislative response over a decade later to cover gaps in recovering illicit wealth that could not be strictly tied to a single demonstrated criminal act.

1.2. Essence and Legal Nature. The criminal law defines the concept of ***special confiscation*** in Article 106 para. (1) CC, establishing that ***special confiscation*** consists of the forced and free-of-charge transfer into state ownership of the assets indicated in para. (2), according to this paragraph, the following are subject to special confiscation assets (including currency values): a) used or intended for the commission of an offense; b) resulting from offenses, as well as any income or benefits derived from such assets; c) given to induce the commission of an offense or to reward the offender; d) held contrary to legal provisions; e) converted or transformed, partially or entirely, from assets resulting from offenses and from income or benefits obtained from these assets; f) which constitute the object of money laundering or terrorist financing offenses.

In case these assets no longer exist, cannot be found, cannot be recovered, or their confiscation is impossible for any other reason, another asset of equivalent value is confiscated as a priority, and in its absence, its monetary value is confiscated.

If the assets indicated in para. (2) have been intermingled with legally acquired assets, the part of the assets or their counter-value corresponding to the value of the assets resulting from offenses and the income or benefits obtained from those assets shall be confiscated (para. (3) Art. 106 CC).

Special confiscation applies even if the suspect, accused, defendant, or convicted person is released from criminal liability or criminal punishment, or if amnesty was applied or their death occurred. Special confiscation does not apply in case of release from criminal liability due to the expiration of the statute of limitations, except for minor, less serious, or serious offenses, and if the term expired after the initiation of the criminal proceedings (para. (4) Art. 106 CC) [1].

Conclusion. According to this last cited provision, the state loses the possibility of applying special confiscation if the statute of limitations expired prior to the initiation of criminal proceedings (definitively)!

If, however, the statute of limitations expired but *after* the initiation of criminal proceedings, the state will not prosecute the person criminally but will apply special confiscation, yet another condition is imposed — the committed offenses must be minor, less serious, or serious. Therefore, offenders will not be punished, but the illicit wealth or assets will still be confiscated (many perpetrators intentionally delayed the criminal process to remain in possession of certain assets).

Para. (5) Art. 106 CC stipulates that special confiscation does not apply to offenses committed through a press organ or any other mass media outlet.

Conclusion. The provision in para. (5) aligns with Article 10 of the ECHR [5] (freedom of expression); thus, the state will not apply special confiscation to the "instruments of crime" (machinery or other equipment of a press organ, TV station, etc., with the help of which certain offenses were committed). If it proceeded otherwise, there is a risk that the state could use confiscation to limit or even suppress freedom of expression (Article 10 presumes that state interference with freedom of expression must be minimal and strictly necessary).

In turn, Art. 106^1 CC does not explicitly define the concept of extended confiscation; however, following the legislator's logic, the term "confiscation" has the same meaning,

except that the area of confiscated assets/values is larger (according to the dictionary [6], the term "extended" means grown, broadened, enlarged, increased), the law mentions that assets other than those indicated in Art. 106 are also subject to extended confiscation. Nevertheless, analysis of the cited provisions allows us to conclude that assets subject to extended confiscation are those acquired by the suspect, accused, defendant, or convicted person within the last 5 years before and, if applicable, after the moment the offense was committed, up to the date the act of referral to the court is issued, the value of which exceeds by more than 20 forecasted average monthly salaries per economy, established by Government decision, the licit income acquired by them.

To order extended confiscation, a series of conditions expressly provided by law must also be met, namely: the court forms its conviction that the respective assets may derive from criminal activities. The court's conviction may be based, inter alia, on the difference between licit income and the value of assets acquired in the same period, on the fact that there is no plausible licit source for the assets, or that the suspect, accused, defendant, or convicted person has ties to organized crime; and the offenses indicated in para. (1) Art. 106[1] CC have been committed, for which the law provides a maximum penalty of imprisonment for a term of at least 4 years.

When applying the provisions of para. (2), the value of assets held both by the suspect, accused, defendant, or convicted person and by the third-party natural or legal persons mentioned in Art. 106[2] CC shall be taken into account.

When establishing the difference between licit income and the value of acquired assets, the value of the assets at the date of their acquisition and the expenses incurred by the suspect, accused, defendant, or convicted person and their family members shall be taken into account, including those of third-party natural or legal persons mentioned in Art. 106[2] (para. (4) Art. 106[1]).

If, upon the adoption of the decision by the court, the assets subject to extended confiscation no longer exist, cannot be found, or have been intermingled with legally acquired assets and cannot be separated from them, or if their confiscation is impossible for any other reason, money and other assets covering their value shall be confiscated instead (para. (5) Art. 106[1]).

Para. (6) provides that assets and money obtained from the exploitation or use of assets subject to confiscation shall also be confiscated, including assets into which criminal assets have been transformed or converted, as well as income or benefits obtained from these assets.

According to para. (7) Art. 106[1] CC, if the suspect, accused, defendant, or convicted person holds money, it shall be confiscated as a priority. If the money held is insufficient, other assets shall be confiscated [1].

Although both measures involve the forced and free-of-charge transfer of assets into state ownership, their legal nature is defined by their preventive, rather than punitive, purpose, with both institutions being categorized as security measures [7, p.342].

Special Confiscation has an eminently objective character (*in rem*). It targets the *instrumentum sceleris* (tools of crime) and *productum sceleris* (direct product). The state intervenes to neutralize the state of danger created by holding assets that served to commit an act provided for by criminal law.

Extended Confiscation introduces a subjective and presumption-based dimension. It is not limited to assets resulting from the specific offense for which the person is convicted, but extends "the arm of the law" over the entire patrimony acquired within a determined period (as a rule, 5 years before committing the act and, if applicable, after the

moment of committing the offense, up to the date of issuing the act of referral to the court), if there is evidence that its value considerably exceeds licit income (exceeding by more than 20 forecasted average monthly salaries per economy, established by Government decision). It targets assets that exceed the licit income of a person convicted of certain categories of serious offenses [8, p.89].

1.3. Similarities between the Two Institutions:

- **Legal Nature**: Both are security measures (Art. 98 CC RM) aiming to remove a danger and prevent the commission of new acts.
- **Public Law Character**: The transfer of assets is forced and free of charge in favor of the state.
- **Subject of Application**: Both can only be ordered by a court of law through a conviction sentence (with the exceptions provided by law for special confiscation in case of termination of criminal proceedings.
- **Rights of Third Parties**: Both measures provide for the protection of *bona fide* third parties (persons who did not know and could not have known about the illicit origin of the assets).

1.4. Fundamental Differences.

1. Link to the Offense: In the case of special confiscation, a direct link must be demonstrated (the asset was used in or resulted from act X); in contrast, extended confiscation is based on an indirect link (patrimonial disproportion suggests general criminal activity).

2. Standard of Proof: In special confiscation, there is certain proof regarding the origin or destination of the asset, opposite to extended confiscation where there is only a rebuttable presumption of an illicit character based on the impossibility of justification through licit income.

3. Burden of Proof: Art. 106 CC – rests exclusively with the prosecution; Art. 106^1 CC – rests with the prosecution (to demonstrate the disproportion), but a "partial reversal" occurs (the defendant must justify the difference).

4. Scope of Application: Special confiscation applies to any offense provided for by the Criminal Code, whereas extended confiscation applies only to a limited list of serious and exceptionally serious offenses ("Assets other than those indicated in Art. 106 are subject to extended confiscation in case the person is suspected, accused, under trial, or convicted for committing the offenses provided in Art. 140^1–142, 144, 158, Art. 164 para. (2) lit. f), Art. 165–168, Art. 171 para. (2) lit. a) and para. (3) lit. a), Art. 172 para. (2) lit. a) and para. (3) lit. a), Art. 173 para. (2), Art. 174–175^1, 181^1–181^3, 186–191, 206, 208–208^5, 214^1, 217–217^4, 218–220^1, 223–233, 236–246^1, Art. 247 para. (2), Art. 248–253, 257, 259–260^6, 260^8, 275, 278–280, 282–286, 289–290, 292, 295–295^2, 302, 324–329, 330^2, 332–335^1, 342, 343, 361, and 362^1, if the act is natured to generate an economic benefit (para. (1) Art. 106^1)").

5. Moment of Asset Acquisition: The asset must exist at the moment of committing the act or immediately after in the case of special confiscation; extended confiscation targets assets acquired "within the last 5 years before and, if applicable, after the moment the offense was committed, up to the date of issuing the act of referral to the court".

6. Value of Assets: In special confiscation, the value of the assets subject to confiscation does not matter; in extended confiscation, one of the conditions for ordering it is that the value of the assets acquired "exceeds by more than 20 forecasted average monthly salaries per economy, established by Government decision, the licit income acquired".

A frequent problem in Moldovan courts is the confusion between these two institutions:

Special confiscation (Art. 106 CC) has the character of an "object punishment" (*in rem*). It targets assets used or intended for the commission of the offense. *Example from practice*: In cases of smuggling (Art. 248 CC), Moldovan courts constantly apply special confiscation to vehicles modified for hiding goods [9].

Extended confiscation (Art. 106[1] CC) is much more complex because it targets assets exceeding the person's licit income, even if a direct link cannot be proven to a specific offense for which the person is accused, being deduced instead from general criminal activity.

A critical distinction resides in the ***standard of proof***. In special confiscation, the prosecution must demonstrate the direct asset-offense link. In extended confiscation, a partial reversal of the burden of proof applies: once the prosecutor demonstrates the disproportion between wealth and income, the possessor must justify the licit origin of the assets [10].

In connection with this, problems regarding the "reversal of the burden of proof" frequently appear in Moldovan jurisprudence [11] practice shows that prosecutors encounter difficulties in demonstrating the disproportion between wealth and income, and courts tend to be extremely cautious not to violate Article 46 of the Constitution (the right to property). Courts in the Republic of Moldova often remain absolutely faithful to the principle of *actori incumbit probatio*. For example, in illicit enrichment cases (Art. 330[2] CC), the defense frequently argues that the assets belong to relatives (parents, in-laws) who worked abroad, or that assets were acquired from donations at festive events, etc.

In the absence of strict monitoring of financial flows by CARA from the initial phase, Moldovan courts often refuse extended confiscation, considering that *in dubio pro reo* (doubt favors the accused) also applies to the origin of money. Even in extended confiscation, judges sometimes demand that prosecutors indicate exactly from which illicit activity the sum for every single brick of a house originates, which defeats the very essence of the "extended" concept. This approach is contrary to the spirit of ECHR jurisprudence (*Gogitidze v. Georgia*), which accepts that the state can presume the illicit nature of disproportionate wealth if the person has already been convicted of a profit-generating offense. Here, we note that in cases handled in Chișinău, a frequent problem is how the judge interprets Art. 106[1] para. (2). While in special confiscation the prosecutor must say "this car was used to commit smuggling", in extended confiscation, he says "this defendant has 3 properties, though his cumulative salary over 5 years does not cover even half the value of one".

II. Procedural and Substantive Aspects Regarding the Evaluation and Substitution of Criminal Assets. Another important issue in applying extended confiscation is the evaluation and substitution of assets (the standard of evaluation).

Paragraph (4) of Article 106[1] CC stipulates that "when establishing the difference between licit income and the value of acquired assets, the value of the assets at the date of their acquisition and the expenses incurred by the suspect, accused, defendant, or convicted person and their family members shall be taken into account, including those of third-party natural or legal persons mentioned in Art. 106[2]", keeping in mind the condition stipulated in para. (2) lit. a) that: "the value of assets acquired... exceeds by more than 20 forecasted average monthly salaries per economy... the licit income acquired". This legislative specification is fundamental to respecting the principles of legality and predictability, but raises major challenges in practice:

- **The Problem of Inflation and Market Volatility**: In the Republic of Moldova, the real estate market and that of mobile assets (cars, luxury items) have experienced major fluctuations over the last decade. Evaluating an asset at its value from 5 years ago requires complex expertise.

- **Parallel Financial Investigation (The Role of CARA)**: Determining the value at the moment of acquisition is not done simply by consulting the price indicated in the contract (which is often undervalued to avoid taxes or hide the origin of money), but through comparative market analyses. In these cases, the court must rely on evaluation reports by CARA specialists, who use indirect methods to estimate real value rather than just relying on legal acts of property transfer.
- **Transformed Assets:** If a defendant bought land with illicit money and subsequently built a villa on it, para. (4) obliges a clear distinction between the value of the initial expenditure/investment and the surplus value added later, a process that complicates the burden of proof for the prosecutor.

Paragraphs (5) and (6) of Art.106[1] CC institute the so-called mechanism of a "safety net" or **confiscation by equivalent**. Thus, "if, upon the adoption of the decision by the court, the assets subject to extended confiscation no longer exist, cannot be found, or have been intermingled with legally acquired assets and cannot be separated from them, or if their confiscation is impossible for any other reason, money and other assets covering their value shall be confiscated instead. Assets and money obtained from the exploitation or use of assets subject to confiscation shall also be confiscated, including assets into which criminal assets have been transformed or converted, as well as income or benefits obtained from these assets".

Therefore, confiscation by equivalent intervenes when assets that should have been confiscated in-kind can no longer be found, have been consumed, alienated, or mixed with legally acquired assets. The legal essence of this institution lies in the fact that it no longer targets the specific asset (*in rem*), but targets its patrimonial value. The state transforms its claim over a specific object into a general monetary claim over the patrimony of the convicted person.

The criminal law provides that if the suspect, accused, defendant, or convicted person holds money, it shall be confiscated as a priority. If the money held is insufficient, other assets shall be confiscated (para. (7) Art. 106[1] CC).

In the practice of applying extended confiscation, difficulties in executing the measure can appear:

- **Alienation to *Bona Fide* Third Parties**: If the defendant sold a car bought with bribe money to a person who did not know the origin of the funds, the state cannot take the car from the new owner. In this case, the court will oblige the defendant to pay a sum of money equivalent to the sale price.
- **Fungible Assets (Money)**: If sums of money derived from the offense were spent on vacations, services, or perishable goods, the confiscation of an equivalent sum from present or future licit income is ordered.
- **Capital Intermingling**: If corruption money was used to pay the mortgage for an apartment partially paid from salary, a share of the apartment or the counter-value of the illicit sum injected into that asset will be confiscated.

A major problem in Moldova is the solvency of convicted individuals at the moment of the definitive sentence. Frequently, even though the confiscation by equivalent of colossal sums is ordered, judicial executors find that the defendant "owns no property".

In this context, we recommend establishing the necessity of applying a **precautionary seizure** on any licit asset of the defendant right from the start of the criminal investigation, precisely to guarantee the possibility of confiscation by equivalent at the end of the trial.

III. The Role of CARA in Recovering Criminal Assets. The regulatory framework

governing ARBI's activity is constituted by Law No.48 of 30.03.2017 on the Criminal Assets Recovery Agency (CARA) [12] and other internal acts of the NAC (National Anti-Corruption Center). The purpose of the law is to create the normative framework necessary for recovering criminal assets, identical to the purpose for which CARA was established. As for the process of recovering criminal assets, it is regulated by the Criminal Procedure Code of the Republic of Moldova (Chapter III) [13].

In the Republic of Moldova, the Criminal Assets Recovery Agency (CARA), an autonomous subdivision within the National Anti-Corruption Center (NAC), is the central actor without which Art. 106[1] CC would remain a dead letter.

3.1. CARA's Competences in the Recovery Process. The Criminal Procedure Code expressly lists the stages of this process in Art. 229[1], according to which the recovery process of criminal assets unfolds in the following stages:

1. Tracing and identifying criminal assets, accumulating evidence (utilizing national and international databases through CARIN or INTERPOL networks to find hidden assets);

2. Freezing and managing criminal assets (rapid application of precautionary measures to "freeze" assets, including managing seized assets; for example, the early sale of cars that lose value through non-use, an important legislative novelty in RM);

3. Confiscation of criminal assets and reparation of damages;

4. Effective execution of the decision regarding the recovery of criminal assets (including cooperation with foreign authorities to return funds to the state budget of Moldova).

To fulfill its mission, ARBI has the following duties:

a) tracing and identifying criminal assets and accumulating evidence by conducting parallel financial investigations and drafting reports on their results, as well as freezing criminal assets under the conditions of the Criminal Procedure Code;

a[1]) Conducting financial investigations in the sense of Art. 91;

b) Evaluating, managing, and capitalizing on frozen criminal assets;

c) Keeping records regarding frozen criminal assets, including based on requests from competent foreign authorities;

c[1]) Managing the national information system for records of seized criminal assets, seizure orders, confiscation orders, as well as decisions subsequently adopted regarding these assets;

d) Participating in negotiations regarding the repatriation of confiscated criminal assets;

e) International cooperation and information exchange with competent foreign authorities, including specialized bodies and agencies of the European Union;

f) Collecting and analyzing statistical data relating to the offenses provided by this law;

g) Representing the interests of the state and public legal entities in criminal and civil proceedings for asset recovery and reparation of damages caused by violating the legislation of the Republic of Moldova and other states;

h) Cooperating with public authorities that exercise relevant functions for CARA's activity;

i) Supporting judicial bodies, under the law, to use best practices in identifying and managing assets that may be subject to freezing and confiscation measures within the criminal process [12].

3.2. The Concept of Parallel Financial Investigation. The aforementioned law es-

tablishes that the Criminal Assets Recovery Agency conducts parallel financial investigations under the Criminal Procedure Code (CPC) in connection with the commission of one or more offenses, at least one of which is provided in Art. 2 para. (2) of this law (Art. 90), financial investigations are the totality of activities consisting of accumulating information, analyzing, and verifying all financial, economic, and other relations related to tracing and identifying assets that do not have a legal origin or are/can be the object of freezing and/or confiscation measures (Art. 9^1). The Criminal Procedure Code establishes that the criminal investigation body conducts parallel financial investigations and instructs CARA, by delegation, to trace and identify criminal assets, as well as accumulate evidence regarding them, under Art. 258 of CPC.

Unlike the classic criminal investigation, which focuses on proving the person's guilt (the act, the author, culpability), the parallel financial investigation run by CARA focuses exclusively on "the trail of money" (*follow the money*). In such cases, certain principles/rules must be respected, such as: 1. **Simultaneity**: The essence of success lies in launching the financial investigation at the same time as the criminal investigation. If CARA intervenes only at the trial stage, assets are usually already "laundered" or transferred to inaccessible jurisdictions and **2. Profile of the Beneficial Owner**: CARA has the capacity to look beyond the legal screen. In Moldova, a major barrier in extended confiscation is the use of intermediaries (relatives, friends, or offshore companies). CARA utilizes operational analysis techniques to demonstrate that although a villa is registered under a pensioner's name, the real beneficial owner who pays the bills and lives there is the defendant.

However, the imperfection of the legislation in force or even the lack of normative acts regulating certain key issues regarding asset recovery creates certain impediments to the effective recovery of assets. For example, according to the CARA report for 2021, the agency stated: "Following the evaluation of assets, cash in national currency and freely convertible foreign currency in a total sum of 15,474,135.10 lei was taken into administration and subsequently deposited into treasury accounts managed by CARA" [14]. During 2025, the Criminal Assets Recovery Agency seized assets worth nearly 710 million lei [15].

In cases where precautionary measures are lifted, large sums of money are returned, among the reasons for restitution presented by the agency are: "dismissal of the criminal case and removal of the person from prosecution; acquittal of the person of charges of committing the offense (155,726.95 lei); payment of the counter-value of confiscated sums and/or fines" [14].

In addition, Moldovan courts hesitate to apply confiscation if there is no definitive conviction sentence for the main offense, even if the asset disproportion is obvious.

As methodological barriers, we can invoke: ***justification through "prior savings"*** (defendants frequently claim that financial resources or assets were obtained from licit activities, such as performance bonuses for sports, etc.) and the ***use of intermediaries*** (a portion of assets are identified as being under the control of relatives who lack personal income to justify the purchases).

In this context, CARA expressly points out the lack of provisions that would allow the successful performance of its asset recovery missions [14].

At the same time, following the conducted analysis, it is found that although the normative framework of the Republic of Moldova was substantially modernized in the 2024–2025 period, the effective asset recovery rate remains disproportionate to the damages caused. To overcome this impasse, the following interventions are required:

- **Standardization of Proving "Licit Income"**: It is imperative for the Supreme Court of Justice to develop a Methodological Guide clarifying income evaluation criteria.

In Moldova, invoking "wedding donations" or "unconfirmed remittances" is a common practice to justify wealth. We propose that the burden of proof be considered fulfilled by the prosecution once the discrepancy is demonstrated, leaving the burden of presenting irrefutable evidence (banking documents, customs declarations) to the defendant to overturn the presumption of an illicit character.

- **Introduction of Civil Forfeiture (Non-Conviction Based Forfeiture)**: Moldova should examine adopting a mechanism through which assets can be confiscated within a civil procedure, independently of a criminal conviction sentence. This would allow asset recovery in cases where the defendant dies, flees the country, or benefits from the statute of limitations on criminal liability but cannot justify their wealth.
- **Specialization of Judicial Panels**: Given the complexity of CARA investigations and the technical nature of asset evaluation (crypto-assets, bearer shares, layering schemes), it is recommended to create specialized panels for economic crime and grand corruption within courts of first instance and appeal.
- **Early Sale of Seized Assets:** Extending the practical application of the mechanism for capitalizing on assets before the final sentence to avoid their depreciation (especially for vehicle fleets and technological equipment) and to ensure the liquidity of the recovery fund.

IV. Comparative Law Analysis: Between the American "RICO ACT" Model and Procedural Realities in the Republic of Moldova. Evaluating the efficiency of confiscation mechanisms in the Republic of Moldova cannot be done in isolation; it requires benchmarking against pioneering international standards, particularly the RICO Act (Racketeer Influenced and Corrupt Organizations Act) adopted by the US in 1970 [16]. Although grounded in different legal systems (Common Law vs. Civil Law), both regulations pursue the same strategic objective: annihilating the financial infrastructure of organized crime. RICO served as a global source of inspiration for what we call today "extended confiscation".

In essence, RICO was created to strike at the "brains" of criminal organizations (the Mafia), not just the "hands" executing the offenses, emphasizing the confiscation of the assets of the entire criminal enterprise. Both RICO and Moldova's legislation (Art. 106^1 CC) share the same premise: organized crime cannot be defeated solely by sentencing leaders or members of organized criminal groups to prison, but by bankrupting them.

4.1. Similarities We can identify certain similarities between the content and essence of the compared legal provisions. First, it concerns **targeting indirect profit:** both systems admit that a criminal leader is rarely caught "red-handed". Therefore, both allow the confiscation of assets that cannot be tied to a single specific offense, but are the result of a "racketeering activity" (in the US) or a "general criminal activity" (in Moldova).

Secondly, just like in the Republic of Moldova, where CARA (Criminal Assets Recovery Agency) tracks assets transferred to relatives, RICO allows for "criminal forfeiture," targeting any illicitly acquired interest, property, or contractual right, even if held through intermediaries or shell companies (**third-party confiscation** – *When applying the provisions of paragraph (2), the value of assets held by both the suspect, accused, defendant, or convicted person, as well as by the third-party natural or legal persons mentioned in Article* 106^2), paragraph (3) of Article 106^1 of the Criminal Code, *shall be taken into account*)".

Third, it concerns the **evidentiary standard:** although RICO is a criminal law, it introduced the concept of "preponderance of the evidence" for the forfeiture part in the US, an idea reflected in the spirit of extended confiscation in Moldova (where asset disproportion creates a presumption that must be rebutted).

4.2. Major Flaws and Differences (Moldova vs. USA). Although the goal is similar, the mechanisms in the Republic of Moldova present certain structural weaknesses or differences compared to the American model:

4.2.1. From "Criminal Enterprise" to "Predicate Offense". The main difference lies in the object of confiscation. While the legislation of the Republic of Moldova (Art. 106[1] CC) conditions extended confiscation on the existence of a specific **predicate offense** (the serious act for which the conviction was obtained), the RICO Act introduces the concept of a **"criminal enterprise**". In the American model, once membership in a racketeering-type organization is proven, the state can confiscate any interest or property that circulated through that organization, without needing to tie every single asset to a specific individual criminal act.

In the Republic of Moldova, the major flaw lies in the fragmented approach. If a criminal leader is convicted of an offense that is not found on the restrictive list of Art. 106[1] CC, his manifestly disproportionate wealth often remains untouched, even if there are reasonable indications that it derives from unsanctioned illicit activities. This "list barrier" drastically limits CARA's capacity to act proactively.

4.2.2. Civil Forfeiture vs. Dependency on a Criminal Sentence. A fundamental lesson offered by the RICO model is the use of civil forfeiture (*in rem*). This allows the state to act directly against the asset under the "preponderance of the evidence" standard of proof, without requiring a prior criminal conviction of the possessor.

In contrast, the system in the Republic of Moldova remains dependent on a **definitive criminal conviction**. This dependency transforms the recovery process into an arduous journey, vulnerable to delay tactics or the death/flight of the suspect. National jurisprudence demonstrates that applied seizures often "melt away" during the judicial stage because courts hesitate to apply the presumption of an illicit character in the absence of proof "beyond a reasonable doubt" — a standard much more rigid than that applied in RICO-type jurisdictions or in ECHR jurisprudence (*Gogitidze v. Georgia*).

4.2.3. The Burden of Proof. RICO is extremely aggressive. Once racketeering activity is demonstrated, the presumption that all profit is illicit is very hard to combat. In Moldova, courts are much more protective of property rights. Moldovan judges often demand additional proof tying the asset "almost directly" to the illicit activity, thereby diluting the force of the "extension" of confiscation.

In conclusion, adopting elements from the "spirit of RICO" in Moldova would require a paradigm shift. We propose expanding the scope of Art. 106[1] CC to include any profit-generating offense and validating judicial presumptions so that the burden of proof is effectively shifted onto the possessor of disproportionate wealth. Only thus will confiscation transition from a "complementary penalty" status to that of a national economic security tool.

This would mean:

- **Partial Decoupling from the Criminal Conviction**: Introducing a civil procedure for confiscating unjustified wealth (similar to civil forfeiture in the US), moving focus from criminal guilt to the lack of a licit origin of funds.
- **Expanding the List of Offenses**: RICO covers a vast range of activities (from gambling to mail fraud). Moldova could extend the list under Art. 106[1] CC to include any offense generating significant financial profit.
- **Utilizing "Judicial Presumptions"**: Encouraging judges to use logical deductions (if an official has a salary of 10,000 lei but drives a 100,000 euro car, the presumption of illicitness must be the starting point, not the exception).

Unlike the rigors of the RICO Act, which allows the financial dismantling of the en-

tire organized structure, legislation in the Republic of Moldova remains dependent on individual conviction, leaving escape hatches for assets controlled through complex layering schemes.

The conducted study highlights a major discrepancy between the modern legislative framework of the Republic of Moldova and the low efficiency of asset recovery in practice. Although the institutions of special and extended confiscation are regulated, their application is hampered by rigid standards of proof and procedural barriers.

V. Conclusions and recommendations. As a result of our intervention in the matter of special and extended confiscation, we have identified the following conclusions:

- **Excessive Dependency on the Criminal Sentence:** Unlike international models (such as RICO in the US), confiscation in the Republic of Moldova remains tethered to a definitive criminal conviction. This leaves the process vulnerable to delay tactics, or the death or flight of the suspect.
- **Fragmented Approach to Offenses:** Extended confiscation is limited to a strict list of predicate offenses. If a criminal leader is convicted of an act outside the list, his disproportionate wealth remains untouched.
- **Non-Uniform Standard of Proof:** Although the law allows for a "partial reversal" of the burden of proof (the defendant must justify the wealth gap), courts tend to apply highly rigid standards. Judges often demand proof linking the asset "almost directly" to the illicit activity, neutralizing the essence of the "extended" concept.
- **The Problem of Solvency and Intermediaries:** A major barrier is the use of relatives or offshore companies to hide assets. Often, at the end of the trial, even if confiscation by equivalent is ordered, it is found that the defendant officially owns no assets.

Concrete Proposals for Optimizing the Legal Framework (*Lex Ferenda*).

1. Procedural and Institutional Reform:

- ***Introduction of Civil Forfeiture (Non-Conviction Based)***: Adopting a mechanism independent of the criminal process that allows the confiscation of assets when the accused flees the country, dies, or when the statute of limitations expires.
- ***Specialization of Magistrates***: Creating specialized judicial panels for economic crime and grand corruption to handle the complexity of financial investigations (such as crypto-assets or layering schemes).
- ***Standardization of Proving "Licit Income"***: Development of a Methodological Guide by the Supreme Court of Justice to clarify income evaluation and limit unfounded justifications (e.g., "wedding donations" or unconfirmed remittances).

2. Streamlining Recovery and Administration:

- ***Mandatory Precautionary Seizure***: Instituting the obligatoriness of applying a seizure on any licit asset of the defendant right from the beginning of the criminal investigation to guarantee confiscation by equivalent.
- ***Early Capitalization***: Expanding the practical use of selling assets before the final sentence (especially for cars or equipment) to avoid their depreciation and ensure the liquidity of the recovery fund.

3. Legislative Adjustments (Criminal Code):

- ***Elimination of the "List Barrier":*** Expanding the application of Art. 106^1 CC to any offense that generates significant financial profit, inspired by the broad spectrum of the RICO Act.
- ***Validation of Judicial Presumptions*:** Encouraging the use of logical deductions in the judicial process; a manifest discrepancy between an official's salary and held assets must be the starting point for a presumption of illicitness.

Bibliographical references

1. Criminal Code of the Republic of Moldova No.985 of 18.04.2002. Published: 14.04.2009. In: Official Gazette No.72-74 art. 195 / Amended by Law No.26 of 05.03.26, Official Gazette No.108-111/06.03.26 art. 87; in force: 06.03.26. Available: https://www.legis.md/cautare/getResults?doc_id=153355&lang=ro#.
2. Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on Asset Recovery and Confiscation. Available: https://eur-lex.europa.eu/legal-content/ro/ALL/?uri=CELEX:32024L1260.
3. Law No.190 of 21.07.2022 for the amendment of certain normative acts. Published: 05.08.2022. In: Official Gazette No.246-250 art. 476.
4. Law No.35 of 13.03.2025 for the amendment of certain normative acts (improving the mechanism for the confiscation of criminal assets). In: Official Gazette No.143 of 19.03.2025, art. 139.
5. European Convention on Human Rights, concluded in Rome on 04.11.1950 (amended and supplemented by subsequent protocols). Available: https://www.echr.coe.int/documents/d/echr/convention_ron.
6. https://dexonline.ro/definitie/extins (accessed 07.04.26)
7. Borodac A. Criminal Law. General Part. Chișinău: Central Typography, 2022, p.342.
8. Grosu, V. Special and Extended Confiscation: Between Theory and Judicial Practice. Chișinău: USM Publishing House, 2021, p.89.
9. https://jurisprudenta.csj.md/search_plen_penal.php?id=1459. (Accessed 15.04.2026).
10. ECHR, Case of Gogitidze and Others v. Georgia, Judgment of 12 May 2015. Available: https://agent.gov.md/comunicate-de-presa/gogitidze-si-altii-impotriva-georgiei.
11. Decision of the Supreme Court of Justice of 07.02.2019 (case file no. 4-1ril-5/2019. Available: https://jurisprudenta.csj.md/search_interes_lege.php?id=6. (Accessed 15.04.2026).
12. Law No.48 of 30.03.2017 on the Criminal Assets Recovery Agency. In: Official Gazette No.155-161 of 19.05.2017, art. 251 (with subsequent amendments). Available: https://www.legis.md/cautare/getResults?doc_id=147976&lang=ro. (Accessed 27.04.2026).
13. Criminal Procedure Code of the Republic of Moldova No.122 of 14.03.2003. Published: 05.11.2013. In: Official Gazette No.248-251 art. 699 (with subsequent amendments). Available: https://www.legis.md/cautare/getResults?doc_id=153916&lang=ro#. (Accessed 27.04.2026).
14. https://cna.md/sites/default/files/media/documents/2025-05/arbi/rapoare/2021_Raport_ARBI.pdf (Accessed 20.04.2026).
15. NAC Report: ARBI seized assets worth nearly 710 million lei in 2025. Available: https://ipn.md/arbi-a-pus-sub-sechestru-bunuri-in-valoare-de-aproape-710-milioane-de-lei-in-2025-raport-cna. (Accessed 20.04.2026).
16. U.S.C. §§ 1961-1968. Racketeer Influenced and Corrupt Organizations Act. Text available on the U.S. Department of Justice website. Available: https://www.justice.gov/archives/jm/criminal-resource-manual-109-rico-charges. (Accessed 20.04.2026).
17. Garaba Mihai. Extended Confiscation versus Special Confiscation. In: Intellectus No.1/2025, pp. 128-135. Available: https://ibn.idsi.md/ro/vizualizare_articol/231499/datacite.
18. Analysis Report on Criminal Confiscation in the Republic of Moldova. Published by the Soros Foundation, 2023, 33 p. Available: https://soros.md/wp-content/uploads/2024/04/Confiscare_penala_v2.pdf.
19. The Concept of the Proposed Civil Confiscation Mechanism in the Republic of Mol-

dova, drafted by the Ministry of Justice. Available: https://justice.gov.md/sites/default/files/document/attachments/conceptul_mecanismului_de_confiscare_civila_propus_in_republica_moldova.pdf.
20. Judgment of the Constitutional Court of the Republic of Moldova No.19 of 2015 on the review of constitutionality of certain provisions regarding extended confiscation. Available: https://www.constcourt.md/libview.php?l=ro&idc=7&id=625&t=/Media/Noutati/Confiscarea-extinsa-a-bunurilor-i-incriminarea-imbogatirii-ilicite-constitutional?l=ro&idc=7&id=625&t=/Media/Noutati/Confiscarea-extinsa-a-bunurilor-i-incriminarea-imbogatirii-ilicite-constitutional.
21. Bogdan Camelia. The Legal Nature of the Confiscation Measure in Criminal Proceedings. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3337733.
22. Sergiu Crijanovschi, Irina Codreanu. Special Confiscation and Extended Confiscation: European Standards in Asset Confiscation and Recovery. Published on Juridice.md. Available: https://juridicemoldova.md/9010/confiscarea-speciala-si-confiscarea-extinsa-standarde-europene-in-confiscarea-si-recuperarea-activelor.html.
23. Racu Vitalie. The Origin of Assets Subject to Extended Confiscation. In: The proceedings of the Conference "Crime – Criminal Liability – Punishment. Law and Criminology", pp. 169-179. Available: https://ibn.idsi.md/sites/default/files/imag_file/169-179_2.pdf.
24. Martin Daniel. Extended Confiscation – A New Safety Measure in the Criminal Legislation of the Republic of Moldova. In: The proceedings of the Conference "Integration through Research and Innovation", Chișinău, Moldova, November 10-11, 2014, pp.134-137.

CZU 343.9:343.34 **DOI: https://doi.org/10.5281/zenodo.20811779**

TERRORISM AND ORGANIZED CRIME: MODERN FORMS OF MANIFESTATION, INTERACTION AND OPERATIONAL CONVERGENCE

Ștefan-Gabriel DASCĂLU,
PhD, University Lecturer,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0005-9739-1646

Abstract

This article analyzes the nexus between terrorism and organized crime from a criminological and operational perspective, highlighting both the points of convergence and the fundamental differences between the two phenomena. In the context of the globalization of crime and the intensification of threats to international security, both academic literature and institutional discourse tend to emphasize the existence of a direct and systematic link between terrorism and organized crime. However, the critical analysis conducted within this study demonstrates that this connection is not universal, but rather dependent on contextual, political, economic, and social factors.

The findings indicate that there is an operational convergence between the two phenomena, reflected in the use of shared resources such as trafficking networks, logistical infrastructures, and illicit financing mechanisms. Nevertheless, the motivational differences remain essential: organized crime is primarily profit-driven, whereas terrorism pursues ideological, political, or religious objectives.

In conclusion, the relationship between terrorism and organized crime should be understood as opportunistic and context-dependent, and institutional approaches must reflect this complexity in order to avoid analytical and policy errors.

Keywords: terrorism, organized crime, international security, police cooperation, operational convergence, radicalization, transnational networks.

TERORISMUL ȘI CRIMINALITATEA ORGANIZATĂ: FORME MODERNE DE MANIFESTARE, INTERACȚIUNE ȘI CONVERGENȚĂ OPERAȚIONALĂ

Abstract

Prezentul articol analizează conexiunea dintre terorism și criminalitatea organizată dintr-o perspectivă criminologică și operațională, evidențiind atât punctele de convergență, cât și diferențele fundamentale dintre cele două fenomene. În contextul globalizării criminalității și al intensificării amenințărilor la adresa securității internaționale, literatura de specialitate și discursul instituțional tind să accentueze existența unei legături directe și sistematice între terorism și criminalitatea organizată. Analiza critică realizată în cadrul acestui demers evidențiază însă faptul că această conexiune nu este universală, ci depinde de factori contextuali, politici, economici și sociali.

Rezultatele cercetării arată că există o convergență operațională între cele două fenomene, manifestată prin utilizarea unor resurse comune, precum rețelele de trafic, infrastructura logistică sau mecanismele de finanțare ilicită. Cu toate acestea, diferențele de natură motivațională rămân esențiale: criminalitatea organizată este orientată predominant spre profit, în timp ce terorismul urmărește obiective ideologice, politice sau religioase.

În concluzie, conexiunea dintre terorism și criminalitatea organizată trebuie înțeleasă ca fiind una oportunistă și contextuală, iar abordările instituționale trebuie să reflecte această complexitate pentru a evita erorile de analiză și de politică publică.

Cuvinte-cheie: terorism, criminalitate organizată, securitate internațională, cooperare polițienească, convergență operațională, radicalizare, rețele transnaționale.

Introduction. In the context of accelerated globalization and profound transformations in the field of international security, the relationship between terrorism and organized crime has become a central subject in both academic literature and institutional discourse [1]. The intensification of economic flows, increased mobility of individuals, and rapid technological development have contributed to shaping a global environment in which criminal activities are becoming increasingly complex and interconnected. Within this framework, the clear delineation between different forms of criminality becomes progressively more difficult, while the interactions between them gain particular relevance for the analysis of security phenomena.

In particular, the relationship between terrorism and organized crime is often portrayed as direct, systematic, and continuously intensifying. Numerous institutional approaches and security strategies promote the idea of convergence between the two phenomena, emphasizing the existence of common mechanisms of financing, logistics, and operational activity [8]. In this regard, it is frequently argued that terrorist groups resort to activities specific to organized crime in order to secure the resources necessary for their operations, while criminal organizations may benefit from the context of instability generated by terrorist actions.

However, a careful examination of the specialized literature reveals the existence of divergent perspectives regarding this relationship. Thus, certain theoretical approaches support the idea of a progressive convergence between terrorism and organized crime, driven by their adaptation to the new realities of the global environment, while other approaches emphasize the structural and functional differences that limit such convergence [2]. This diversity of perspectives reflects the complexity of the phenomenon and the difficulty of framing it within a single theoretical model.

On the other hand, the development of transnational networks and the consolidation of illegal markets have created the conditions for the emergence of areas of intersection between the two phenomena, particularly in regions characterized by political instability, armed conflict, or weakened state authority. In such contexts, terrorist groups may resort to activities such as drug trafficking, smuggling, or money laundering in order to sustain their operations, while criminal organizations may exploit the opportunities generated by unstable environments to expand their own activities. These interactions contribute to shaping an image of convergence; however, they do not necessarily reflect the existence of a stable structural relationship between the two phenomena.

In reality, the interaction between terrorism and organized crime is, in many cases, limited to punctual collaborations, determined by immediate interests and contextual opportunities. Not all terrorist groups are involved in organized criminal activities, and not all criminal organizations are willing to cooperate with terrorist entities, especially given that such an association may attract a stronger reaction from authorities. This perspective highlights the variable and non-uniform character of the relationship between the two phenomena, contrary to the tendency toward generalization found in some analyses.

At the same time, it is important to emphasize that the differences between terrorism and organized crime are not limited to operational aspects, but fundamentally concern their motivational nature. While organized crime primarily pursues profit and the maintenance of control over illegal markets, terrorism is oriented toward the achievement of ideological, political, or religious objectives [7]. This difference influences not only the strategies adopted by such groups, but also the way in which they interact with the external environment and with other criminal entities.

In this context, the tendency to treat terrorism and organized crime as interde-

pendent phenomena may lead to distortions in analysis and, implicitly, to the formulation of inadequate security policies. An approach that ignores the fundamental differences between these two types of threats risks generating disproportionate or ineffective measures that fail to adequately reflect operational realities. Therefore, a critical and nuanced analysis is required, one that takes into account both the elements of convergence and their limitations.

Therefore, this article aims to analyze the relationship between terrorism and organized crime from a criminological and operational perspective, highlighting both the points of intersection and the fundamental differences between the two phenomena. The main objective of this research is to demonstrate that this connection is neither universal nor structural, but rather variable, opportunistic, and context-dependent, which necessitates the adoption of differentiated approaches in the field of security policies.

Research methodology. The methodology employed in this article is based on a qualitative approach, grounded in doctrinal, criminological, and normative analysis [4] of the phenomena under study. The research relies on the examination of specialized literature in the fields of criminology and security studies, as well as on the analysis of relevant international documents concerning organized crime and terrorism.

At the same time, the analytical approach incorporates a comparative dimension, through the examination of different theoretical perspectives on the relationship between the two phenomena, as well as by highlighting the differences between the operational and motivational models of the groups involved.

The data used are predominantly of a secondary nature, derived from criminological studies, institutional reports, and normative documents, considering the difficulty of direct access to primary information in the case of the analyzed phenomena, which are characterized by a high degree of secrecy and operational dynamism.

1. Theoretical framework of the research. The theoretical framework of this research is grounded in contributions from the fields of criminology and security studies, which analyze the relationship between terrorism and organized crime. The specialized literature highlights two main directions: on the one hand, convergence theory, which supports the existence of a growing proximity between the two phenomena, and on the other hand, differentiation theory, which emphasizes their distinct character from both a motivational and organizational perspective.

In this context, the article adopts an integrative perspective, examining both the points of intersection and the structural differences between the two types of entities. The theoretical approach employed makes it possible to highlight the dynamic and context-dependent nature of the relationship between terrorism and organized crime.

This approach allows for a nuanced understanding of the phenomenon under analysis, avoiding both the oversimplification of the relationship between terrorism and organized crime and the tendency to treat them as entirely independent phenomena. At the same time, it provides a coherent analytical framework for interpreting the evolving interactions between these forms of criminality in different operational environments. Such a perspective reinforces the need to move beyond rigid theoretical models and to adopt flexible interpretative approaches.

2. Methodological approach. The research methodology is based on a qualitative approach, employing methods specific to doctrinal and criminological analysis. Relevant concepts, definitions, and theoretical models are examined, as well as the manner in which these are reflected in institutional documents and security strategies.

At the same time, the study employs a comparative method, by analyzing the char-

acteristics of terrorism and organized crime from the perspective of their objectives, organizational structures, and modes of operation. This approach enables the identification of both common elements and fundamental differences between the two phenomena.

Therefore, the methodology employed provides an appropriate analytical framework for the critical assessment of the relationship between the two phenomena, allowing for the formulation of scientifically grounded conclusions. Moreover, it facilitates a structured comparison between different analytical perspectives, contributing to a clearer understanding of the complexity of the subject matter. Such an approach strengthens the reliability of the findings and enhances the overall coherence of the research.

3. Data sources and research limitations. The data used in this article are predominantly of a secondary nature, derived from specialized literature, institutional reports, and relevant normative documents. The choice of this approach is justified by the difficulty of accessing primary data in the field under analysis, which is characterized by a high degree of secrecy.

The main limitation of the research lies in its reliance on secondary sources, which may reflect certain institutional or doctrinal perspectives. Nevertheless, the diversity of the sources employed contributes to increasing the degree of objectivity and to the formulation of relevant conclusions. In this regard, the use of multiple types of sources allows for a more balanced interpretation of the analyzed phenomena.

In this sense, the research findings must be interpreted within the context of these methodological limitations, without, however, diminishing the relevance of the conclusions reached. Acknowledging these limitations enhances the transparency of the research process and reinforces the credibility of the analytical approach adopted.

Discussions and results obtained.

I. Operational and Motivational Dimensions of the Relationship between Terrorism and Organized Crime. **1.1. Conceptual Delimitations Regarding Terrorism and Organized Crime**. Terrorism and organized crime represent two distinct phenomena, traditionally analyzed separately in the specialized literature, yet interconnected in certain operational contexts. Organized crime is generally defined as a set of illegal activities carried out by structured, stable, and coordinated groups, with the aim of obtaining profit [4] or influence through the use of violence, corruption, and intimidation. In contrast, terrorism is characterized by the deliberate use of violence or the threat of violence for political, ideological, or religious purposes, with the primary objective of creating a state of fear and influencing the decisions of public authorities [7].

The fundamental difference between the two phenomena is determined by the nature of their motivation: while organized crime predominantly seeks material gain, terrorism is based on ideological or political objectives. However, in certain situations, the two phenomena may interact, generating hybrid forms of manifestation. Such interactions, although not systematic, illustrate the adaptive capacity of both types of entities in response to changing operational environments.

This conceptual delimitation represents an essential starting point for the analysis of the relationship between the two phenomena, preventing theoretical confusion and erroneous interpretations. At the same time, it provides a clear analytical foundation for distinguishing between superficial similarities and structurally significant differences.

1.2. Operational Convergence between Terrorism and Organized Crime. The analysis of these phenomena highlights the existence of an operational convergence between terrorism and organized crime, primarily manifested at the level of resources and functional mechanisms. In practice, terrorist groups frequently resort to activities specific to

organized crime in order to secure the financing and logistical support necessary for the conduct of their operations [8].

Thus, activities such as drug trafficking, human trafficking, smuggling, document forgery, or money laundering represent common instruments used by both types of entities [5]. Moreover, criminal infrastructure—consisting of transportation networks, distribution channels, and corrupt contacts—can be exploited by terrorist groups to facilitate movement, supply, and concealment of their members. This shared use of illicit infrastructures underscores the practical advantages derived from such operational overlaps.

At the same time, globalization and technological development have contributed to the expansion of these networks at a transnational level, facilitating ad hoc cooperation between different groups. However, such collaboration is generally opportunistic and driven by immediate interests, rather than the result of a structural or ideological alliance. These forms of interaction are therefore better understood as pragmatic adaptations to environmental conditions rather than indicators of a deep structural convergence.

This difference in motivational nature constitutes the essential criterion for distinguishing between the two phenomena, even in the context of potential operational interactions. Consequently, operational convergence should not be interpreted as evidence of a fundamental transformation in the nature of either phenomenon.

1.3. Motivational Divergence: The Central Element of Distinction. Despite the existence of operational convergence, the differences between terrorism and organized crime remain essential at the motivational level. Organized crime is primarily oriented toward profit generation and the maintenance of control over illegal markets [3], which determines a pragmatic relationship with the state, based on the avoidance of direct confrontation and, in some cases, on infiltration into institutional structures.

In contrast, terrorism aims to destabilize the existing order and to impose an ideological, political, or religious vision [7]. In this regard, violence does not represent merely an instrumental means, but also a tool of communication and intimidation, oriented toward achieving a symbolic impact on both the population and public authorities. This symbolic dimension of violence differentiates terrorism from other forms of criminality in a fundamental way.

This fundamental difference also influences the organizational behavior of the two types of groups. While criminal organizations seek stability and continuity of their illegal activities, terrorist groups may accept significant risks and even self-destruction in the name of a cause perceived as superior. Such contrasting behavioral patterns highlight the profound divergence in strategic logic between the two phenomena.

1.4. Hybrid Models and the Limits of the Terrorism – Organized Crime Nexus. The concept of "hybrid" is frequently used to describe situations in which elements specific to organized crime and terrorism intersect. This model explains the existence of overlapping areas [2], in which terrorist groups adopt criminal practices, while criminal organizations may, in certain contexts, employ methods characteristic of terrorism.

However, critical analysis shows that this connection should not be generalized. In many cases, cooperation between the two types of groups is limited, temporary, and determined by specific circumstances. Furthermore, there are numerous situations in which criminal organizations deliberately avoid association with terrorist groups, in order to prevent attracting the attention of authorities and to protect the continuity of their economic activities. This selective avoidance behavior reflects the fundamentally different risk calculations underlying the two types of entities.

Therefore, the relationship between terrorism and organized crime can be char-

acterized as contextual and opportunistic, rather than structural [1]. This conclusion has important implications for the development of security policies, which must avoid oversimplified approaches and consider the complexity of the analyzed phenomena. It also highlights the necessity of adopting flexible and evidence-based policy responses.

Consequently, the hybrid model should be interpreted as a contextual exception rather than a general rule in the analysis of the relationship between terrorism and organized crime. Such an interpretation prevents the misapplication of theoretical models and contributes to a more accurate understanding of the dynamics between the two phenomena.

Conclusions. The analysis conducted highlights the fact that the relationship between terrorism and organized crime is a complex one, characterized by a balance between operational convergence and motivational divergence. Although both academic literature and institutional discourse frequently promote the idea of a direct and systematic connection between the two phenomena, the findings of this research demonstrate that such a relationship cannot be generalized [1]. Rather, it must be understood within the limits imposed by specific contextual conditions.

Operational convergence is evident in the use of shared resources, such as trafficking networks, logistical infrastructure, and illicit financing mechanisms. These elements facilitate ad hoc collaborations between terrorist groups and organized crime entities, particularly in contexts characterized by political instability, armed conflict, or weakened institutional control.

However, the fundamental differences between the two phenomena remain essential. Organized crime is predominantly oriented toward profit generation and the maintenance of stability in illegal activities, whereas terrorism pursues ideological, political, or religious objectives and is characterized by a greater propensity for direct confrontation with the state and the assumption of significant risks. *This divergence fundamentally shapes the strategic behavior and long-term objectives of the groups involved.*

The concept of "hybrid" provides a useful framework for understanding areas of overlap; however, its application must be approached with caution in order to avoid oversimplification of reality. In many cases, the connection between terrorism and organized crime is opportunistic, limited, and dependent on contextual factors. *Consequently, the hybrid model should be regarded as an analytical tool rather than a definitive explanatory paradigm.*

In this regard, future research directions must move beyond general approaches and focus on the concrete mechanisms through which terrorism and organized crime interact in specific contexts, characterized by political instability, weakened institutional control, or the existence of consolidated illegal markets. The present analysis demonstrates that the relationship between the two phenomena is neither uniform nor predictable, but manifests itself in a variable and opportunistic manner, depending on factors such as the operational environment, available resources, the pressure exerted by authorities, and the strategic objectives of the groups involved.

Thus, it becomes essential to develop more sophisticated analytical tools capable of capturing not only the existence of connections between the two phenomena, but also their nature, intensity, and duration. Future approaches should integrate interdisciplinary perspectives, combining criminological analysis with insights from security studies, international relations, and public policy, in order to provide a deeper understanding of the dynamics of these forms of criminality. *Such an integrative approach enhances both analytical depth and policy relevance.*

Furthermore, the practical implications of these findings are significant. Security policies should not assume of a generalized fusion between terrorism and organized crime, but rather should be constructed on the basis of differentiated analyses that consider the specific characteristics of each phenomenon. Otherwise, there is a risk of adopting disproportionate or ineffective measures that fail to adequately reflect operational realities and may lead to inefficient allocation of resources.

In particular, international law enforcement cooperation must be adapted to these realities through the development of flexible mechanisms oriented toward the rapid exchange of relevant information, without neglecting the structural and motivational differences between the two types of threats. In this regard, the role of international institutions and specialized agencies becomes essential; however, their effectiveness depends on their capacity to understand and integrate the complexity of the relationship between terrorism and organized crime.

Therefore, future research should aim not only at the theoretical deepening of the phenomenon, but also at identifying concrete operational models of interaction that would enable more effective anticipation and counteraction of these forms of criminality. Only through such an approach, grounded in critical analysis and continuous adaptation to the evolving security environment, can coherent and effective public policies be developed, capable of addressing the complex challenges posed by contemporary criminality.

Bibliographical references

1. Deflem M. Policing World Society: Historical Foundations of International Police Cooperation. Oxford: Oxford University Press, 2002.
2. Fijnaut C., Paoli L. (eds.). Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and Beyon. Dordrecht: Springer, 2004.
3. Dascălu Ștefan Gabriel. Combaterea criminalității organizate. Craiova: Editura Sitech, 2016.
4. Finckenauer J.O. Problems of Definition: What is Organised Crime? In: Trends in Organized Crime, 2005.
5. United Nations. United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000. Available: https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html (accessed 15.04.2026).
6. European Union. Council Framework Decision 2008/841/JHA on the Fight against Organised Crime, 2008. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008F0841 (accessed 15.04.2026).
7. European Union. Directive (EU) 2017/541 on Combating Terrorism, 2017. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L0541 (accessed 15.04.2026).
8. EUROPOL. EU Serious and Organised Crime Threat Assessment (SOCTA). Available: https://www.europol.europa.eu/publications-events/main-reports/eu-serious-and-organised-crime-threat-assessment-socta (accessed 15.04.2026).

UDC 343.98(477):340.6 **DOI: https://doi.org/10.5281/zenodo.20811899**

THE SYSTEM OF SUBJECTS OF FORENSIC EXPERT ACTIVITY IN UKRAINE: CURRENT STATE AND PROBLEMS OF ITS FORMATION

Artem KOVALENKO,
PhD Candidate, Associate Professor,
Department of Law,
Academician I.M. Lutskyi, King Danylo University,
Ivano-Frankivsk, Ukraine
ORCID: 0000-0003-3665-0147

Valentina LYAMPEL,
Deputy Director, Head of Department of Criminalistic Research,
Ivano-Frankivsk Scientific-Research Center,
Ministry of Internal Affairs of Ukraine,
Ivano-Frankivsk, Ukraine
ORCID: 0000-0002-7838-4716

Abstract
The article examines the current state of the Ukrainian system of subjects of forensic expert activity and highlights certain problems related to its functioning. The provisions of the Law of Ukraine on "Forensic Examination" concerning the system of subjects of forensic expert activity are analyzed. It is demonstrated that forensic, forensic medical, and forensic psychiatric examinations may be conducted exclusively by specialized state forensic institutions of the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Defense of Ukraine, the Ministry of Health of Ukraine, the Security Service of Ukraine, and the State Border Guard Service of Ukraine. These subjects, together with experts who are not employees of specialized state institutions, are also authorized to conduct all other types of forensic examinations.

The structure and principal tasks of the expert services within the Ukrainian Ministry of Internal Affairs, the Security Service of Ukraine, and the State Border Guard Service, as well as the forensic science institutes of the Ministry of Justice of Ukraine, are examined in detail. Attention is also drawn to the ongoing reform of forensic institutions subordinated to the Ministry of Health. It is noted that the forensic expert powers previously vested in the Ministry of Defense have been transferred to civilian institutions. The article also presents proposals put forward by representatives of Ukraine's anti-corruption law enforcement bodies regarding the establishment of a specialized forensic institution within the structure of the National Anti-Corruption Bureau of Ukraine. Furthermore, the system of forensic institutions and independent experts who do not belong to the category of state specialized institutions is demonstrated.

Emphasis is placed on the principal problems associated with the formation and functioning of the system of forensic institutions in Ukraine. Among these, particular attention is drawn to the absence of a single center responsible for the development and implementation of state policy in this field, the lack of coherent legislative regulation, the subordination of forensic institutions to different governmental agencies, and the potential for conflicts of interest arising from the institutional subordination of both the ordering bodies and the providers of forensic examinations within the same authority, among other issues.

Keywords: forensic expert activity, forensic examination, forensic expert, judicial proceedings, criminal proceedings, system of subjects, public administration.

SISTEMUL SUBIECȚILOR ACTIVITĂȚII DE EXPERTIZĂ CRIMINALISTICĂ ÎN UCRAINA: STAREA ACTUALĂ ȘI PROBLEMELE FORMĂRII ACESTEIA

Abstract
Articolul examinează starea actuală a sistemului ucrainean de subiecți ai activității de expertiză criminalistică și evidențiază anumite probleme legate de funcționarea acestuia. Sunt analizate prevederile Legii

Ucrainei privind „expertiza criminalistică" referitoare la sistemul subiecților activității de expertiză criminalistică. Se demonstrează că expertizele criminalistice, medico-legale și psihiatrico-legale pot fi efectuate exclusiv de instituții criminalistice de stat specializate din cadrul Ministerului Afacerilor Interne al Ucrainei, Ministerului Justiției al Ucrainei, Ministerului Apărării al Ucrainei, Ministerului Sănătății al Ucrainei, Serviciului de Securitate al Ucrainei și Serviciului de Grăniceri de Stat al Ucrainei. Acești subiecți, împreună cu experți care nu sunt angajați ai instituțiilor de stat specializate, sunt de asemenea autorizați să efectueze toate celelalte tipuri de expertize criminalistice.

Sunt analizate în detaliu structura și principalele sarcini ale serviciilor de expertiză din cadrul Ministerului Afacerilor Interne al Ucrainei, Serviciului de Securitate al Ucrainei și Serviciului de Grăniceri de Stat, precum și ale institutelor de criminalistică ale Ministerului Justiției al Ucrainei. De asemenea, este evidențiată reforma în curs a instituțiilor de expertiză subordonate Ministerului Sănătății. Se menționează că atribuțiile de expertiză criminalistică anterior deținute de Ministerul Apărării au fost transferate către instituții civile. Articolul prezintă, de asemenea, propuneri formulate de reprezentanți ai organelor anticorupție din Ucraina privind înființarea unei instituții criminalistice specializate în structura Biroului Național Anticorupție al Ucrainei. În plus, este prezentat sistemul instituțiilor criminalistice și al experților independenți care nu fac parte din categoria instituțiilor de stat specializate.

Se pune accent pe principalele probleme asociate formării și funcționării sistemului instituțiilor criminalistice din Ucraina. Dintre acestea, o atenție deosebită este acordată lipsei unui centru unic responsabil de elaborarea și implementarea politicilor de stat în acest domeniu, lipsei unei reglementări legislative coerente, subordonării instituțiilor criminalistice diferitelor autorități guvernamentale și potențialului de conflicte de interese generate de subordonarea instituțională atât a organelor solicitante, cât și a furnizorilor de expertize în cadrul aceleiași autorități, printre alte probleme.

Cuvinte-cheie: activitate de expertiză criminalistică, expertiză criminalistică, expert criminalist, proceduri judiciare, proceduri penale, sistem de subiecți, administrație publică..

Introduction. Forensic examinations constitute an important procedural instrument for establishing the truth in all categories of judicial proceedings. Such examinations are initiated and conducted in cases where the resolution of issues before the court requires specialized knowledge that, as a general rule, is not possessed by the court or by the participants in judicial proceedings. At the same time, the conduct of forensic examinations represents a socially significant and controlled sphere of human activity that is thoroughly regulated by current legislation and access to which is granted only to specifically authorized subjects. Meanwhile, the system of subjects of forensic expert activity operates under conditions of continuous reform, regular updates to relevant legislation, and excessive workload associated with the ongoing war in Ukraine. These circumstances indicate the need for a detailed study of its current state, the identification of existing problems in its functioning, and the development of possible ways to address them.

Discussions and results obtained. In accordance with Article 7 of the Law of Ukraine n "Forensic Examination", the subjects of forensic expert activity include state specialized institutions and their territorial branches, expert institutions of municipal ownership, as well as forensic experts who are not employees of these institutions, and other specialists (experts) in relevant fields of knowledge, acting in the manner and under the conditions defined by the cited Law.

The system of state specialized institutions includes: research institutions of forensic examinations of the Ministry of Justice of Ukraine; research institutions of forensic examinations, as well as forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine; and the expert services of the Ministry of Internal Affairs of Ukraine, the Ministry of Defense of Ukraine, the Security Service of Ukraine, and the State Border Guard Service of Ukraine [1]. Only the aforementioned specialized state institutions are exclusively authorized to conduct forensic expert activity, including forensic, medical, and psychiatric examinations. Other types of forensic examinations may also be conducted by forensic experts who are not employees of specialized state institutions.

The State Judicial Administration of Ukraine also operates its own state forensic expert institution [2]. However, since this authority is not mentioned in Article 7 of the Law

of Ukraine on "Forensic Examination," the state-owned limited liability company "Center for Forensic Examination and Expert Studies" operating under its authority is not classified as a "specialized" forensic institution. Consequently, its experts are not authorized to conduct forensic examinations of a criminalistic nature.

The most extensive component of the system of subjects of forensic expert activity, both in terms of the number of institutions and the staff of forensic experts, is the ***Expert Service of the Ministry of Internal Affairs (MIA) of Ukraine***.

The institutions of the Expert Service of the MIA of Ukraine that carry out forensic expert activity include the State Scientific Research Forensic Center of the MIA of Ukraine in Kyiv, as well as territorial research forensic centers of the Ministry of Internal Affairs of Ukraine [3], which operate in almost all regional centers of the country in accordance with the administrative-territorial structure defined by Article 133 of the Constitution of Ukraine. The Donetsk Research Forensic Center of the Ministry of Internal Affairs of Ukraine is currently located in Dnipro due to the temporary occupation of Donetsk, while the Luhansk Research Forensic Center of the Ministry of Internal Affairs of Ukraine was reorganized in 2025.

The units of the Expert Service of the Ukrainian MIA conduct a full range of forensic examinations, with the exception of forensic medical and forensic psychiatric ones, which, in accordance with the law, may be performed exclusively by forensic institutions subordinated to the Ministry of Health of Ukraine. The State Scientific Research Forensic Center of the Ministry of Internal Affairs of Ukraine serves as the central unit of the Expert Service, entrusted with the tasks of organizational, legal, and methodological coordination of the activities of the Expert Service units of the Ministry of Internal Affairs of Ukraine. It is also responsible for providing forensic and technical-criminalistic support to law enforcement agencies, conducting research in the field of forensic and technical-criminalistic support, performing forensic examinations, maintaining forensic records, and participating in the development of technical-criminalistic tools as well as ensuring their application in practical activities.

A separate task assigned to the Expert Service of the Ministry of Internal Affairs of Ukraine is to ensure the participation of forensic experts and specialists of the Service's institutions as specialists during crime scene examinations, the conduct of pre-trial investigations, and judicial proceedings in accordance with the law [3]. Employees of the Expert Service of the MIA of Ukraine may be involved in conducting a crime scene examination in criminal proceedings as part of a specialized mobile laboratory. Such involvement is carried out upon a written request from the head of the pre-trial investigation body or a person acting in that capacity (in exceptional cases an oral request may be made and subsequently formalized in writing). It is applied in situations involving particularly serious incidents, including homicide or grievous bodily harm committed with firearms, armed robbery with injured victims, sexual violence against minors, major traffic accidents, large-scale fires, explosions or threats of explosions, the discovery of improvised explosive devices, as well as other complex cases [4].

The functions of the expert service of the ***State Border Guard Service of Ukraine*** are performed by its own Main Forensic Center. The primary purpose of this institution is to conduct forensic examinations and expert studies of passport documents that, in accordance with the law, are used when crossing the state border of Ukraine, with the aim of preventing, detecting, and investigating criminal and other offenses through the application of forensic and criminalistic methods and techniques [5]. The aforementioned institution conducts technical examinations of physical documents (2.1 "Examination of document requisites"; 2.3 "Examination of printing forms and other means used in the production of

documents") and portrait examinations (6.2 "Identification of a person based on features of appearance using material images"). These examinations are carried out upon request of the units of the State Border Guard Service of Ukraine, as well as upon appointment by pre-trial investigation bodies or by courts.

Although the activities of the State Border Guard Service of Ukraine are coordinated through the Ministry of Internal Affairs of Ukraine, the Main Forensic Center of the State Border Guard Service of Ukraine is not a unit of the Expert Service of the Ministry of Internal Affairs and is not directly subordinated to the State Scientific Research Forensic Center of the Ministry of Internal Affairs of Ukraine.

Within the system of the ***Ministry of Justice of Ukraine***, seven independent research institutions of forensic examinations operate. These include the Kyiv Scientific Research Institute of Forensic Examinations in Kyiv, which has territorial branches in Cherkasy, Vinnytsia, Ivano-Frankivsk, Ternopil, Chernihiv, Kropyvnytskyi, Zhytomyr, Chernivtsi, and Khmelnytskyi; the National Scientific Center "Hon. Prof. M. S. Bokarius Forensic Science Institute" in Kharkiv, which has territorial branches in Kyiv, Poltava, and Sumy, as well as a Donetsk branch temporarily relocated to Kyiv; the Odesa Scientific Research Institute of Forensic Examinations in Odesa, which has branches in Mykolaiv and Kherson; the Lviv Scientific Research Institute of Forensic Examinations in Lviv, which has branches in Uzhhorod, Rivne, and Kyiv; the Dnipropetrovsk Scientific Research Institute of Forensic Examinations in Dnipro, which has a branch in Zaporizhzhia; the Research Center for Forensic Examination in the Field of Information Technologies and Intellectual Property in Kyiv, which has a Western Ukrainian branch located in Ivano-Frankivsk; and the Research Center of Independent Forensic Examinations of the Ministry of Justice of Ukraine in Kyiv. The forensic institutions of this ministry conduct a full range of forensic examinations, with the exception of forensic medical and forensic psychiatric ones, upon appointment by pre-trial investigation bodies, the prosecution, and courts, as well as upon request of private individuals.

Within the structure of the Ministry of Justice of Ukraine there also operates the Department of Expert Support of Justice, which is entrusted with directing and supervising the activities of research institutions of forensic examinations belonging to the sphere of administration of the Ministry, as well as forensic experts who are not employees of state specialized institutions. This department is also responsible for organizing scientific and methodological support for forensic expert activity and for ensuring the functioning of the Central Expert Qualification Commission under the Ministry of Justice of Ukraine. Article 8 of the Law of Ukraine on "Forensic Examination" assigns to the Ministry of Justice of Ukraine the responsibility for providing scientific-methodological and organizational-managerial support for the activities of forensic experts who are not employees of state specialized institutions. In accordance with procedures established by the Ministry, it also exercises oversight over compliance with legislation governing forensic expert activity by experts of this category.

In addition, the Ministry of Justice of Ukraine ensures the publication of the interdepartmental scientific and methodological journal Criminalistics and Forensic Examination, which serves as a specialized professional publication in the field of scientific and methodological support for forensic expert activity.

Forensic institutions subordinated to the ***Ministry of Health of Ukraine*** possess the exclusive authority to conduct forensic medical [6], forensic psychiatric, and comprehensive forensic psychological and psychiatric examinations [7] upon appointment by pre-trial investigation bodies, the prosecution, and courts, as well as at the request of private individuals.

In particular, forensic medical examinations are carried out by state institutions

of the forensic medical service of Ukraine, which is currently undergoing reform. As of May 2024, a number of municipal institutions of the regional bureaus of forensic medical examination of the Ministry of Health of Ukraine were in the process of termination [8]. The central institution of this service, the Main Bureau of Forensic Medical Examination of the Ministry of Health of Ukraine, was reorganized by Order No.448 of April 3, 2026, issued by the Ministry through its merger with the Institute of Forensic Psychiatry of the Ministry of Health of Ukraine [9]. The process of reorganizing the state regional bureaus of forensic medical examination has also been initiated [10].

Forensic medical experts of the Ministry of Health of Ukraine are also systematically involved by pre-trial investigation bodies as specialists to participate in the inspections of corpses and in exhumations on the basis of Articles 238 and 239 of the Criminal Procedure Code of Ukraine.

Forensic psychiatric examinations may be conducted exclusively by employees of state specialized institutions for forensic psychiatric and forensic psychological examinations subordinated to the Ministry of Health of Ukraine, which include research institutions of forensic examinations and forensic psychiatric institutions of the Ministry. The leading entity within this system is the Institute of Forensic Psychiatry of the Ministry of Health of Ukraine, which has forensic examination branches in the Vinnytsia, Volyn, Dnipro, Donetsk (temporarily relocated to Kyiv), Zhytomyr, Zakarpattia, Zaporizhzhia, Ivano-Frankivsk, Kyiv, Kirovohrad, Lviv, Mykolaiv, Odesa, Poltava, Rivne, Ternopil, Kharkiv, Kherson, Khmelnytskyi, Cherkasy, Chernivtsi, and Chernihiv regions. At the same time, inpatient forensic examinations are conducted exclusively at the Lviv branch of forensic examinations of the Institute [11]. It should be noted that the Ministry of Health of Ukraine has initiated the reorganization of forensic medical examination bureaus through their merger with the aforementioned Institute of Forensic Psychiatry, which may indicate an effort to unify the subjects of forensic expert activity subordinated to the Ministry of Health into a single organizational and managerial structure.

In accordance with Part 2 of Article 71 of the Fundamentals of the Legislation of Ukraine on Health Care, organizational management of the forensic medical and forensic psychiatric services is carried out by the central executive authority responsible for implementing state policy in the field of health care [12], namely the Ministry of Health of Ukraine. A commission also operates under the Ministry of Health of Ukraine, the purpose of which is to monitor compliance by state specialized institutions of forensic psychiatric and forensic psychological examinations of the Ministry, as well as by their employees performing administrative and organizational functions, with legislation governing forensic expert activity [13].

Within the system of the ***Security Service of Ukraine***, the Ukrainian Research Institute of Special Equipment and Forensic Examinations operates, performing the functions of the Expert Service of the Security Service of Ukraine [14]. The Institute is entrusted with the tasks of carrying out scientific, research, scientific-technical, and scientific-organizational activities; developing, producing, and maintaining special technical equipment; conducting forensic expert activity; and providing technical and criminalistic support for operational-search and counterintelligence activities, investigative (search) actions, and related functions [15].

The primary expert division of the Institute is the Center for Forensic and Special Examinations. Territorial units (substructural branches) of this Center conduct more than 45 types of forensic examinations in the cities of Kyiv, Vinnytsia, Dnipro, Zhytomyr, Uzhhorod, Ivano-Frankivsk, Kropyvnytskyi, Lutsk, Lviv, Odesa, Poltava, Rivne, Ternopil, Kharkiv, Khmelnytskyi, Cherkasy, Chernivtsi, and Chernihiv [16].

Until November 28, 2013, the structure of the Medical Forces of the Armed Forces of Ukraine included the Center for Forensic Examinations of the ***Ministry of Defense of Ukraine***, which conducted a significant number of complex forensic medical examinations, forensic technical examinations of documents, forensic handwriting examinations, forensic ballistic examinations, and forensic traceological examinations. However, as noted by N. M. Erhard, in 2013 a decision was made to liquidate this institution and to transfer the relevant powers to conduct forensic examinations to civilian subjects of forensic expert activity [17, p. 181-182]. As of the time of preparation of this study, regulatory legal acts and other open sources contain no information on the conduct of forensic expert activity by institutions subordinated to the Ministry of Defense of Ukraine. This may also be related to restrictions on access to information concerning the activities of the Defense Forces of Ukraine under the legal regime of martial law.

Since 2023, the leadership of the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office have consistently advocated the establishment of an independent forensic institution to conduct examinations in criminal proceedings concerning criminal offenses falling within the investigative jurisdiction of the National Bureau. Among the arguments advanced by law enforcement officials in support of this proposal are the acceleration of forensic examinations, the absence of unlawful administrative influence on experts by state authorities whose officials may be subjects of criminal proceedings conducted by the Bureau, and the prevention of information leaks regarding the course of pre-trial investigations, etc. [18]. At the same time, this proposal has been received ambiguously by specialists in the field of criminal justice. As noted by Yurii Hryhorenko, the establishment of a dedicated expert service within the National Anti-Corruption Bureau of Ukraine may lead to a conflict of interest due to the common institutional subordination of both the pre-trial investigation body and the newly created forensic institution [19].

As previously noted, within the system of subjects of forensic expert activity it is also appropriate to distinguish state non-specialized forensic institutions. Among these is the State Enterprise "Center for Forensic Examination and Expert Studies" subordinated to the State Judicial Administration of Ukraine [2], which is currently undergoing reorganization through its transformation into a limited liability company, one hundred percent of the shares in the authorized capital of which will be owned by the state. The aforementioned institution conducts forensic examinations upon request or appointment by participants in criminal, civil, commercial, and administrative proceedings. Among the types of examinations carried out by the Center are forensic engineering and transport examinations, construction technical examinations, computer technical examinations, construction evaluation examinations, land evaluation examinations, commodity examinations, economic examinations, and examinations in the field of intellectual property.

Another numerous group of subjects of forensic expert activity, consists of *forensic experts who are not employees of state specialized institutions*. As of the time of preparation of this study, the Register of Certified Forensic Experts of Ukraine [20] contains information on 1,995 forensic experts who are not affiliated with state specialized institutions, although the certificates of some of them have been terminated. These individuals may carry out professional activities either independently (as self-employed entrepreneurs) or as members of privately owned forensic institutions. Forensic experts who are not employees of state specialized institutions are authorized to conduct a wide range of forensic examinations, with the exception of criminalistic, forensic medical, and forensic psychiatric examinations. As noted above, the responsibility for overseeing the activities of forensic experts who are not employees of state specialized institutions is assigned to

the Ministry of Justice of Ukraine.

The only interdepartmental body within the system of public administration of forensic expert activity is the Coordination Council on Problems of Forensic Examination under the Ministry of Justice of Ukraine, which operates in accordance with regulations approved by the Cabinet of Ministers of Ukraine. The composition of this council is formed from representatives of the aforementioned ministries and other state bodies responsible for state specialized forensic institutions, heads (or deputy heads) of state specialized institutions, as well as forensic experts who are not employees of state specialized institutions, have at least five years of professional experience as forensic experts, and have not been subject to disciplinary liability during the previous year [21]. One of the key tasks of the Coordination Council is the certification and state registration of methodologies for conducting forensic examinations [22].

At the pan-European level, the coordination of subjects of forensic expert activity is carried out by the European Network of Forensic Science Institutes. Ukrainian forensic institutions that participate in this network include the State Scientific Research Forensic Center of the Ministry of Internal Affairs of Ukraine, the Kyiv Scientific Research Institute of Forensic Examinations and the National Scientific Center "Hon. Prof. M. S. Bokarius Forensic Science Institute" of the Ministry of Justice of Ukraine, the Ukrainian Research Institute of Special Equipment and Forensic Examinations of the Security Service of Ukraine, as well as the Main Forensic Center of the State Border Guard Service of Ukraine. The purpose of this network is to improve the exchange of information in the field of forensic science, ensure quality management and professional competence in forensic examinations, promote scientific cooperation, and support the training and professional development of expert personnel. In practice, the European Network of Forensic Science Institutes functions as a self-governing international organization that has been recognized by the European Commission as the leading organization in the field of forensic science [23].

Conclusions. Thus, the system of subjects of forensic expert activity in Ukraine consists of state specialized institutions subordinated to the Ministry of Justice of Ukraine, the Ministry of Health of Ukraine (currently undergoing active reform), the Ministry of Defense of Ukraine (where forensic expert activity has been discontinued), the Security Service of Ukraine, and the State Border Guard Service of Ukraine, which possess the exclusive authority to conduct criminalistic, forensic medical, and forensic psychiatric examinations; state non-specialized institutions (in particular those subordinated to the State Judicial Administration of Ukraine); as well as a network of private forensic experts who operate either independently (as self-employed entrepreneurs) or within privately owned legal entities. The only interdepartmental body within the system of forensic expert activity is the Coordination Council on Problems of Forensic Examination under the Ministry of Justice of Ukraine. At the international level, coordination among subjects of forensic expert activity is carried out by the European Network of Forensic Science Institutes, to which a number of Ukrainian forensic institutions have joined.

An analysis of the current state of the system of subjects of forensic expert activity in Ukraine makes it possible to identify the following pressing problems related to its existence and functioning:

- The absence of a unified and centralized system of public administration in the field of forensic expert activity due to the subordination of state forensic institutions to different public authorities;
- The lack of a single, coherent regulatory and legal framework governing forensic expert activity;
- The absence of a mature system of forensic professional self-governance, which

may be modeled after the systems established in the notarial profession or bar;

- Public concerns regarding potential conflicts of interest arising from the institutional subordination of both the initiators and the providers of forensic examinations (for example, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, and the prospective expert service of the National Anti-Corruption Bureau of Ukraine);

- As well as unequal access to forensic expert services for different entities initiating examinations, including the prosecution and the defense, the victim, and other participants in criminal proceedings.

The authors see the ways to address these problems in the implementation of a comprehensive reform of the system of subjects of forensic expert activity in Ukraine, the unification of relevant legislation, and the strengthening of self-governing principles in the management of this socially significant sphere of activity.

In this regard, a promising direction for further scientific research is the study of the specific features of public administration of the subjects of forensic expert activity in Ukraine.

Bibliographical references

1. Law of Ukraine. (1994, February 25). On forensic examination (No.4038-XII). Available: https://zakon.rada.gov.ua/laws/show/4038-12.
2. Center for Forensic Examination and Expert Studies. (n.d.). Available: https://expert.court.gov.ua/expert.
3. Ministry of Internal Affairs of Ukraine. (2015, November 3). On approval of the Regulation on the Expert Service of the Ministry of Internal Affairs of Ukraine (Order No.1343). Available: https://zakon.rada.gov.ua/laws/show/z1390-15.
4. Ministry of Internal Affairs of Ukraine. (2015, November 3). On approval of the Instruction on the procedure for involving employees of police pre-trial investigation bodies and the Expert Service of the Ministry of Internal Affairs of Ukraine as specialists to participate in crime scene examinations (Order No.1339). Available: https://zakon.rada.gov.ua/laws/show/z1392-15.
5. Administration of the State Border Guard Service of Ukraine. (2010, August 11). On approval of the Regulation on the Main Forensic Center of the State Border Guard Service of Ukraine (Order No.617). Available: https://zakon.rada.gov.ua/laws/show/z0770-10.
6. Ministry of Health of Ukraine. (1995, January 17). Instruction on conducting forensic medical examinations (Order No.6). Available: https://zakon.rada.gov.ua/laws/show/z0254-95.
7. Ministry of Health of Ukraine. (2025, December 23). On the organization of forensic expert activity in the field of forensic psychiatry and psychology (Order No.1935). Available: https://zakon.rada.gov.ua/laws/show/z0023-26.
8. Ministry of Health of Ukraine. (2018, January 26). On approval of the lists of institutions, enterprises, organizations and establishments belonging to the sphere of management of the Ministry of Health of Ukraine (Order No.152). Available: https://zakon.rada.gov.ua/rada/show/v0152282-18.
9. Ministry of Health of Ukraine. (2026, April 3). On the reorganization of the state specialized institution “Main Bureau of Forensic Medical Examination of the Ministry of Health of Ukraine” (Order No.448). Available: https://moz.gov.ua/uk/decrees/nakaz-moz-ukrayini-vid-03-04-2026-448-pro-reorganizaciyu-derzhavnoyi-specializovanoyi-ustanovi-golovne-byuro-sudovo-medichnoyi-ekspertizi-ministerstva-ohoroni-zdorov-ya-ukrayini.
10. Ministry of Health of Ukraine. (2026, April 3). On the reorganization of the state

specialized institution “Kyiv City Bureau of Forensic Medical Examination” (Order No.452). Available: https://moz.gov.ua/uk/decrees/nakaz-moz-ukrayini-vid-03-04-2026-452-pro-reorganizaciyu-derzhavnoyi-specializovanoyi-ustanovi-kiyivske-miske-byuro-sudovo-medichnoyi-ekspertizi.
11. Institute of Forensic Psychiatry of the Ministry of Health of Ukraine. (n.d.). Branches of forensic examinations. Available: https://cmhmda.org.ua/sudovo-ekspertna-diyalnist-instytutu-sudovoyi-psyhiatriyi/filiyi-sudovo-psyhiatrychnyh-ekspertyz.
12. Law of Ukraine. (1992, November 19). Fundamentals of the legislation of Ukraine on health care (No.2801-XII). Available: https://zakon.rada.gov.ua/laws/show/2801-12.
13. Ministry of Health of Ukraine. (2025, December 23). Procedure for monitoring compliance by state specialized institutions of forensic psychiatric and forensic psychological examinations of the Ministry of Health of Ukraine with legislation in the field of forensic expert activity. Available: https://zakon.rada.gov.ua/laws/show/z0024-26#n4.
14. Security Service of Ukraine. (2025, May 30). On approval of the Instruction on the organization of conducting forensic examinations and expert studies in the Expert Service of the Security Service of Ukraine (Order No.209). Available: https://zakon.rada.gov.ua/laws/show/z0913-25.
15. Security Service of Ukraine. (n.d.). Ukrainian Research Institute of Special Equipment and Forensic Examinations. Available: https://ssu.gov.ua/naukovo-doslidnytskyi-instytut.
16. Security Service of Ukraine. (n.d.). Information on types of forensic examinations, expert specialties and indicative lists of questions that may be resolved within forensic examinations (expert studies). Available: https://ssu.gov.ua/uploads/files/docs/%D0%94%D0%BE%D0%B2%D1%96%D0%B4%D0%BD%D0%B8%D0%BA%20%D0%95%D0%BA%D1%81%D0%BF%D0%B5%D1%80%D1%82%D0%BD%D0%BE%D1%97%20%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%B8%20%D0%A1%D0%91%D0%A3.pdf.
17. Erhard, N.M. (2018). Problematic issues of organizing the forensic medical service during a special period. In: Ukrainian Journal of Medicine, Biology and Sports, 3(2), p.181-184. Available: https://doi.org/10.26693/jmbs03.02.181.
18. Judicial-Legal Newspaper. (2026, March 11). NABU and SAP ask to change the rules of investigation: Limit access to court decisions and abolish the “Lozovyi amendments”. Available: https://sud.ua/uk/news/publication/355501-nabu-i-sap-prosyat-izmenit-pravila-sledstviya-ogranichit-dostup-k-sudebnym-resheniyam-i-otmenit-pravki-lozovogo.
19. Hryhorenko Y. (2026, March 24). Independent expertise at NABU: An oxymoron proposed by the draft law. National Bar Association of Ukraine. Available: https://unba.org.ua/publications/11505-nezalezhna-ekspertiza-pri-nabu-oksyumoron-zaproponovanij-zakonoproektom.html.
20. Ministry of Justice of Ukraine. (n.d.). Register of certified forensic experts. Available: https://rase.minjust.gov.ua.
21. Cabinet of Ministers of Ukraine. (1994, November 16). On approval of the Regulation on the Coordination Council on Problems of Forensic Examination under the Ministry of Justice of Ukraine (Resolution No.778). Available: https://zakon.rada.gov.ua/laws/show/778-94-%D0%BF.
22. Cabinet of Ministers of Ukraine. (2008, July 2). On approval of the Procedure for certification and state registration of methodologies for conducting forensic examinations (Resolution No.595). Available: https://zakon.rada.gov.ua/laws/show/595-2008-%D0%BF.
23. European Network of Forensic Science Institutes. (n.d.). Available: https://enfsi.eu.

CZU 343.1:343.98(498) **DOI: https://doi.org/10.5281/zenodo.20812039**

THE IMPORTANCE OF THE REGULATION OF ART. 19 OF LAW NO. 682/2002 ON WITNESS PROTECTION IN PREVENTING AND COMBATING CRIME IN ROMANIA

Elena-Irina RAHIMIAN (CÎRCIUMARU),
University Assistant, "Alexandru Ioan Cuza" Police Academy, Bucharest, Romania,
PhD Student, Bucharest University of Economic Studies, Romania
ORCID: 0009-0005-3395-5705

Abstract

In a criminal trial, the witness represents that "key" person, a natural person, who has knowledge of the circumstances and facts that form the object of the probation. Each state presents a well-defined criminal policy through regulations that configure one of the most important institutions used in preventing and combating crime, namely the witness protection institution.

The development of the process of discovering crimes and increasing the level of safety in terms of the protection conditions for the persons involved represent the main procedural measures of the criminal policy of the Romanian state.

Judicial bodies need data and information that determine the establishment of the factual reality and the person of the offender, in order to fairly resolve any criminal case submitted to trial. In such a context, witnesses are exposed to a series of threats or intimidation in their relationship with criminals, which determines the increased responsibility of the state in ensuring their security. An important role in providing appropriate protection to witnesses is played by a special regulation, Law No.682/2002 on the protection of witnesses, a normative act that ensures the protection and assistance of witnesses, whose life, freedom or bodily integrity is endangered as a result of possessing information regarding the commission of crimes, information that they have provided to judicial bodies in order to discover criminals and resolve criminal cases.

Keywords: evidence, witness, witness protection, Art.19 of Law No.682/2002, criminal policy.

IMPORTANȚA REGLEMENTĂRII ART. 19 DIN LEGEA NR. 682/2002 PRIVIND PROTECȚIA MARTORILOR ÎN PREVENIREA ȘI COMBATEREA CRIMINALITĂȚII ÎN ROMÂNIA

Abstract

În cadrul unui proces penal, martorul reprezintă acea persoană „cheie", persoană fizică, care are cunoștințe depre împrejurările și faptele ce formează obiectul probațiunii. Fiecare stat prezintă o politică penală bine definită prin reglementări ce configurează una dintre cele mai importante instituții folosite în prevenirea și combaterea criminalității, respectiv instituția protecției martorilor.

Dezvoltarea procesului de descoperire a infracțiunilor și creșterea nivelului de siguranță în ceea ce privește condițiile de protecție pentru persoanele implicate reprezintă principalele măsuri cu caracter procedural ale politicii penale a statului român.

Organele judiciare au nevoie de date și informații care să determine stabilirea realității faptice și a persoanei infractorului, cu scopul de a soluționa în mod just orice cauză penală supusă judecății. În astfel de context, martorii sunt expuși la o serie de amenințări sau intimidări în relația cu infractorii, fapt care determină creșterea responsabilitaății statului în asigurarea securității acestora. Un rol important în oferirea unei protecții corespunzătore martorilor îl prezintă o reglementare specială, Legea nr.682/2002 privind protecția martorilor, act normativ prin care este asigurată protecția și asistența martorilor, a căror viață, libertate sau integritate corporală este pusă în pericol ca urmare a deținerii unor informații cu privire la săvârșirea unor

infracțiuni, informații pe care aceștia le-au furnizat organelor judiciare cu scopul de a descoperi infractorii și a soluționa cauzele penale.

Cuvinte-cheie: mijloc de probă, martor, protecția martorilor, art.19 din Legea nr.682/2002, politică penală.

"*Witnesses are the cornerstones of successful criminal justice systems*" [1]

Introduction. Against the backdrop of the globalization phenomenon, economic exchanges have intensified among the world's states, which have influenced the emergence of strong competition in increasing the profits of each country and at the same time an alarming development of crime [2, p.5].

The dynamics that have arisen within societies over time are of several types, namely social, financial and economic dynamics, determining in turn a new form of crime. The size of the crime phenomenon is impossible to measure, but its magnitude can be analyzed in the context of the triggering of large financial systems, by inventorying acts of terrorism, human trafficking, drug trafficking, etc. Unfortunately, confusion has arisen between the legal economy and the money made from illicit activities, states being powerless in confronting the phenomenon of the multiplication and instantaneity of fraudulent financial businesses [3, pp.1-2].

The development of the phenomenon of organized crime represented a challenge for the Romanian legislator, but also for the criminal doctrine, determining them to find effective legal solutions to combat the criminal phenomenon. The category of these effective solutions to combat the criminal phenomenon includes evidentiary procedures that must take into account the particularities of offenses specific to organized crime [4, p.35; 5, p.49; 6, p.33].

In this context, the legislator intended that the fight against the phenomenon of organized crime be carried out both by incriminating the crime of association for the commission of crimes, and by developing a legal framework for the protection of witnesses [7, p.98].

Witnesses represent one of the most important and most frequently used means of evidence in criminal proceedings. In addition to aspects such as the probative force of witness statements, the technique of their interrogation or their relationship with other evidence, an important issue at the level of the Romanian state's criminal policy is the status of witnesses outside the procedural framework. Thus, in a situation where a witness possesses information or data regarding the commission of serious crimes that he has provided to the judicial bodies responsible for discovering criminals, a state of danger is created both for the witness and for his family and close people. The legal institution of witness protection and assistance was developed precisely to balance and reconcile the two great interests, namely finding the truth with the help of the witness and limiting the risks for those who have the quality of witness in a criminal trial [8, p.85].

Research methodology. The first stage of a scientific study is represented by an organized and structured process, which is called the research methodology. The researcher plans within this stage the structure and model that he is going to follow in his scientific work, using methods, phases, principles, tools of scientific knowledge in the chosen research field [9, p.51].

The word "methodology" is a word composed of two Greek words "methodos" and "logos" which mean "method" and "science", and in free translation "the science of method". Any legal phenomenon requires the use of such scientific research methods. Also,

the word "methodos" is formed from two words: "meta" and "odos", meaning "after the way", after the path or guideline that ensures the success of any scientific investigation [10, p.23].

The study on the importance of the regulation of Art.19 of Law No.682/2002 on witness protection in preventing and combating crime in Romania required the use of a complex range of methods, principles and means, because the legal theme is a complex one, referring not only to the protection of witnesses in the Criminal Procedure Code, but also in the special law, namely Law No.682/2002 on witness protection.

The first stage of the scientific research is represented by reviewing the bibliography, in order to know the scientific context regarding the protection of witnesses in Romanian criminal law. A bibliographical list was made and the database of the National Library of Romania and the Central University Library was studied.

The main legal methods used in the scientific research entitled "The importance of the regulation of Art.19 of Law No.682/2002 on witness protection in preventing and combating crime in Romania" are represented by:

– Logical method: used in the presentation of Chapter III and subchapter IV.1 to define the concepts of "witness" and "witness protection";

– Analysis method: general research method, based on the decomposition of a whole into its component elements and the study of each one separately. With the help of the analysis method, we identified throughout the article the special cause of reduction of the sentence contained in Law No.682/2002 on witness protection.

Discussions and results obtained. I. The Concept of "Witness" in Romanian Criminal Law. The witness is part of the extensive list of participants, included in the category of other procedural subjects in the criminal trial. Criminal Procedure Code expresses the essential role of the witness in a criminal trial, namely the provision of evidence related to the subject of the criminal case. The witness represents any person who possesses information about facts or factual circumstances that may constitute evidence in the criminal trial, being summoned by the judicial body in connection with the data he knows in the respective criminal case [11, p.22].

A problem often discussed by criminal doctrine is the situation in which the witness knows facts or circumstances perceived directly, through his own senses or he learned them indirectly, through other persons. In Romania, criminal legislation does not condition the quality of witness depending on the direct or indirect knowledge by the witness of the aspects he reports. The explanation of Romanian criminal doctrine regarding the lack of a condition imposed by the legislator is that in the Romanian criminal procedural system, career judges establish the factual situation by analyzing, after administering all the evidence, the reliability of the witness's statement and his credibility, and not by jurors like in other legal systems that regulate the admissibility of evidence obtained indirectly, namely "by hearsay" [12, p.980].

II. Witness Protection in the Administration of Justice. **2.1. The Concept of "Witness Protection"**. The set of legal provisions by which the witness is protected from possible abuses by the judicial bodies constitutes, in a broad sense, the protection of the witness in criminal law. Also, the rights granted to witnesses pursuant to the Criminal Procedure Code, are also part of witness protection [13, p.109].

The rights that witnesses enjoy according to the Criminal Procedure Code are provided for in general terms in the matter of hearing persons, namely: Art.105 paragraph (1) of the Criminal Procedure Code (CPC) – the right to be heard by an interpreter when he/she does not understand, does not speak or does not express himself/herself well in Ro-

manian; Art.105 paragraph (3) of the CPC – the right to be heard in the presence of a person who has the ability to communicate through the special language, if he/she is deaf, mute or deaf-mute; Art.106 paragraph (1) of the CPC – the right to interrupt the hearing and, if applicable, to be consulted by a doctor, when, during the hearing, he/she shows visible signs of excessive fatigue or symptoms of an illness that affects his/her physical or mental capacity to participate in the hearing. Also, to these are added the rights expressly regulated in the fourth section of chapter II regarding the hearing of witnesses.

In a narrow sense, witness protection refers to the adoption of protective measures aimed at defending the life, freedom, physical and mental integrity, professional activity, and family of witnesses who provide or have provided statements, who may suffer negative consequences for this capacity. Witness protection has two different regulatory bodies, namely the Criminal Procedure Code – General Part, Title IV, Chapter II, Section 5, and Law No.682/2002 on witness protection. Unlike the Criminal Procedure Code, Law No.682/2002 on witness protection offers much more extensive protection to persons who have the status of witness in a criminal case, as it does not refer only to protective measures as regulated by the Criminal Procedure Code, but also to measures to assist them [11, p.31].

2.2. Statements of Protected Witnesses. The provisions of Art.103 of the Criminal Procedure Code regulate the principle of free assessment of evidence, which establishes that evidence does not have a value predetermined by law, for which reason the court evaluates the statements of witnesses together with the other evidence administered in the case. The limitation of this principle is represented by the presence of the protected witness, who, unlike the ordinary witness, presents statements with conditional probative force. This aspect is regulated by the legislator through the provisions of Art.103 paragraph (3) of the Code of Criminal Procedure, which stipulates that the decision to convict, to waive the application of the penalty or to postpone the application of the penalty cannot be based to the decisive extent on the statements of the protected witnesses.

In conclusion, the latter must be corroborated with the circumstances and facts resulting from all the evidence administered in the case [14, p.506].

By Decision No.248 of April 16, 2019, published in the Official Gazette No.494 of June 19, 2019, the Constitutional Court of Romania justifies the limited probative value of the protected witness's statement by the fact that the administration of evidence with witnesses in the criminal trial, under the conditions of Art.126 paragraph (1) of the Criminal Procedure Code, constitutes an exception to the general rules regarding the hearing of witnesses, an exception that infringes the right to a fair trial, especially with regard to the right to defense [15; 11, pp.33-34].

2.3. Witness Protection in Romania. 2.3.1. Witness Protection in the Criminal Procedure Code. Under the Criminal Procedure Code (CPC), witnesses eligible for protection fall into two categories, namely vulnerable witnesses and threatened witnesses. The first category of witnesses, namely the category of vulnerable witnesses, includes concrete situations of vulnerability as a result of the subsequent behavior of the suspect or defendant, the age of the witness, the results of the crime, while threatened witnesses refer to a potential state of danger in which the witness or a member of his family is located, as a consequence of the statements he provided to the judicial bodies [11, p.35].

Witness protection is a legal institution regulated by the provisions of Arts.125-130 CPC, consisting of two components, namely granting the status of threatened or vulnerable witness and ordering one or more protection measures provided for by law.

2.3.2. Law No.682/2002 on Witness Protection. Law No.682/2002 regulates the

protection and assistance of witnesses whose freedom, life or physical integrity are endangered as a result of their possession of information, information regarding the commission of serious crimes, which they have provided or agreed to provide to judicial bodies with a decisive role in discovering criminals [11, p.49].

With the help of this law, the National Office for Witness Protection was established, which presents a series of activities that make up the Witness Protection Program. In order for a person to be included in this Witness Protection Program, there must be a motivated proposal for inclusion, addressed by the criminal investigation bodies to the prosecutor during the criminal investigation phase or by the prosecutor to the judge, after the case has been referred to court. Following the proposal, an ordinance or a conclusion will be issued, by which it is decided whether or not the witness can be included in the program [11, p.50].

III. Art.19 of Law No.682/2002: Special Case for Reduction of the Penalties. In Romanian criminal law, there are two major categories of causes for reducing the sentence: passive or static causes for reducing the sentence, and active or dynamic causes for mitigating the sentence. The category of passive causes for reducing the sentence is represented by several subcategories: causes based on a certain inherent quality of a person (the quality of spouse, close relative, family member) or causes based on another determined quality of a person; causes for reducing the sentence based on a certain objective, determined state, situation or circumstance. The second category of active mitigating causes includes several subcategories: causes for reducing the sentence determined by the offender's adoption of a certain conduct at a time prior to the commission of the crime and mitigating causes regulated in consideration of the offender's determination to adopt a certain post-crime behavior [16, p.337].

The importance of special cases for reducing the sentence in Romanian criminal law concerns several aspects: firstly, by encouraging criminals to provide important information to the criminal prosecution authorities during the criminal prosecution phase regarding other persons who have committed crimes by denouncing them; secondly, by fully covering the damage to the civil party in terms of tax evasion crimes; and last but not least, by the abbreviated procedure of admitting guilt presented in Art.396 paragraph 10 of the Criminal Procedure Code [17, p.107].

According to Art.19 of Law No.682/2002 – the person who has the status of a witness, within the meaning of Art.2 letter a) point 1), and who has committed a serious crime, and before or during the criminal investigation or trial denounces and facilitates the identification and criminal prosecution of other persons who have committed such crimes benefits from a halving of the limits of the punishment provided by law.

Conclusions. The institution of witness protection is a fairly new institution for Romanian criminal law, being regulated by Law No.682/2002 and the Criminal Procedure Code. The dynamics of social changes taking place at the level of the Romanian state require a permanent adaptation of criminal law.

The main concerns of the Romanian legislator are represented by the tightening of penalties and the regulation of procedures that can facilitate the criminal liability of perpetrators.

In this context, given that the witness represents a main pawn in the criminal process, he has been given increased attention by law, through special protection that he can benefit from by meeting certain conditions.

Bibliography

1. Council of Europe. The European Code of Police Ethics: Recommendation Rec(2001)10. Strasbourg: Council of Europe, 2001.
2. Olaru C. Specific Means of Investigating Organized Crime Offenses (Mijloace specifice de investigare a infracțiunilor de criminalitate organizată). Edit.: Hamangiu, București, 2014.
3. Francois L. Criminalite financiere. Edit.: D'Organisation, Paris, 2002.
4. Antoniu G. Reflections on Organized Crime (Reflecții asupra crimei organizate). RDP No.3, 1997.
5. Păun C. Criminal Law and Organized Crime (Legea penală și crima organizată). RDP No.3, 1997.
6. Gorgăneanu I.Gh., Sugestii pentru o protecție judiciară a martorului în procesul penal, RDP nr.1/2001.
7. Hunor K. Protecția martorilor în dreptul procesual penal român, RDP nr.1/2011.
8. Buneci P. Protecția martorilor, RDP nr.2/2003.
9. Avornic Gh. Tratat de teorie generală a statului şi dreptului (în două volume). Vol. I. Chişinău, 2009.
10. Donos V. Metodologia cercetării juridice a responsabilității și răspunderii aleșilor poporului într-un stat de drept. În: Revista "Legea și Viața", 2020.
11. Mareș M. Protecția martorilor și a victimelor infracțiunilor. Edit.: Universul Juridic, București, 2024, pp.31-50.
12. Constantinescu V. Comentariu, în M.Udroiu (coord.), Codul de procedură penală. Comentariu pe articole, ed. a 4-a. Edit.: C.H. Beck, București, 2023, p.980.
13. Lupașcu D. Mareș M. Considerații referitoare la protecția martorilor și procesul echitabil. În: Dreptul, nr.11/2017, p.109.
14. Udroiu, M., Procedură penală. Parte generală, vol.I, ed. a 6-a, Edit. C.H.Beck, București, 2019, p.506.
15. Decizia nr.248 din 16 aprilie 2019. În: M.Of. nr.494 din 19 iunie 2019.
16. Dunea M. Cauzele speciale de nepedepsire și cauzele speciale de reducere a pedepsei. Edit.: Hamangiu, București, 2022, p.337.
17. Rahimian E.I. Importanța cauzelor speciale de reducere a pedepsei în prevenirea și combaterea criminalității în România. În: Revista "Legea și Viața", Ediție Specială 2025, Chișinău, -ISSN 2587-4365,- E-ISSN 2587-4373, p.107.

CZU 344 **DOI: https://doi.org/10.5281/zenodo.20812177**

HUMAN TRAFFICKING FOR THE PURPOSE OF ORGAN HARVESTING: FROM A FRAGMENTED REGULATORY FRAMEWORK TO A UNIFIED APPROACH

Raluca-Mihaela BUCULEA,
University Assistant,
Faculty of Law and Public Administration,
"Tibiscus" University, Timisoara, Romania
Judge,
Timis County Court, Romania
ORCID: 0009-0002-2743-9091

Abstract

An analysis of the legal framework governing human trafficking for the purpose of organ harvesting reveals a fragmentation of regulatory provisions. Although the Palermo Protocol defined human trafficking for the purpose of exploitation—with organ harvesting included within the scope of exploitation—the legal framework is often inconsistent.

There are regulations that criminalize, on the one hand, human trafficking for the purpose of organ harvesting, and on the other hand, organ trafficking. In this regard, we find criminal offenses defined in the Criminal Code, in special laws on organized crime, or in health legislation. This overlap creates difficulties in legal classification, as there are differences between the concepts of exploitation and trafficking, with implications for victim protection and international cooperation mechanisms.

According to international statistical analysis, human trafficking for the purpose of organ harvesting is underreported compared to trafficking for other purposes, such as sexual exploitation or forced labor.

A unified and coherent approach is necessary to integrate this form of exploitation into a clear legal framework; only in this way can a prompt response be provided to a complex phenomenon that is difficult to detect and control, and effective protection of fundamental rights be ensured.

Keywords: human trafficking, organ trafficking, exploitation, organ harvesting, regulation.

TRAFICUL DE PERSOANE ÎN SCOP DE PRELEVARE DE ORGANE: DE LA FRAGMENTARE NORMATIVĂ LA ABORDARE UNITARĂ

Abstract

Analizând regimul juridic al traficului de persoane în scopul prelevării de organe, se constată o fragmentare a reglementărilor normative. Deși Protocolul de la Palermo a definit traficul de persoane în scopul exploatării acestora, în sfera exploatării fiind inclusă și prelevarea de organe, cadrul juridic nu este de cele mai multe ori uniform.

Există reglementări care incriminează pe de o parte traficul de persoane în scop de prelevare de organe, pe de altă parte traficul de organe. Regăsim în acest sens fapte incriminate în codul penal, în legi speciale privind criminalitatea organizată sau legislația din domeniul sănătății. Această interferență generează dificultăți de calificare juridică, existând diferențe între conceptul de exploatare și comercializare, cu implicații asupra protecției victimelor și a mecanismelor de cooperare internațională.

Din analiza statistică la nivel internațional, traficul de persoane în scop de prelevare de organe este inferior ca și raportare celui în alte scopuri, respectiv al exploatării sexuale sau supunerii la muncă forțată.

Este necesară o abordare cât mai unitară, coerentă, care să integreze această formă de exploatare într-un cadru juridic clar, doar în acest mod putându-se oferi un răspuns prompt unui fenomen complex, greu de depistat și controlat și o protecție eficientă a drepturilor fundamentale.

Cuvinte-cheie: trafic de persoane, trafic de organe, exploatare, prelevare organe, reglementare.

Introduction. As noted in the specialized literature, human trafficking constitutes a violation of human rights and of physical and mental integrity, while simultaneously undermining human dignity. However, human trafficking affects not only the individual through its impact on them but also society as a whole. This type of criminal activity has led to an increase in corruption, as well as in crime in general, and to its diversification through the creation of increasingly sophisticated mechanisms to support trafficking, while simultaneously undermining international security.

It is unanimously recognized and accepted that human trafficking is not a new phenomenon specific only to our times. However, the evolution of modern society, the development of communication technologies, and the uneven economic development of nations have led to the emergence of a global phenomenon that is difficult to manage [1, p.160-161].

Furthermore, the advent of the camera, followed by video cameras, the advancement of science—particularly medicine—and the emergence of the first organ transplants have facilitated human trafficking activities, with the aforementioned activities gradually falling within the scope of human trafficking.

What is important, however, in understanding human trafficking is that, regardless of its forms or the periods during which the criminal activity took place, the key elements have remained the same [2].

Methods and materials applied. In terms of research methods, the study employs complex research methods, including analysis, historical research, and the comparative method. The materials used include international and European conventions, criminal codes and special laws, and specialized scientific works.

Discussions and results obtained. I. International and European Concerns regarding Human Trafficking and Organ Trafficking. The scale of the human trafficking phenomenon has prompted the international community to take action and launch initiatives aimed at understanding the phenomenon and developing mechanisms to combat it. Nations around the world have realized that, to combat a phenomenon with global implications, regulation by all states is necessary. Furthermore, the terms needed to be clearly defined so they could be incorporated into the national laws of states.

The first international instrument binding on signatory states was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol). It "provides, for the first time in the history of global legislation on this crime, an internationally agreed definition" [3].

In Article 3, the Protocol defines the term "*trafficking in* persons" as *the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, by abduction, fraud, deception, abuse of authority or of a position of vulnerability, or by offering or accepting payments or benefits to obtain the consent of a person having control over another for the purpose* of exploitation. The same article also defines the concept of exploitation, which "*includes, at a minimum, exploitation through the prostitution of another person or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, and the removal or sale of organs*" [4].

The objectives of the Protocol are to prevent transnational human trafficking carried out by organized criminal groups, to protect victims of trafficking, and, very importantly, to encourage international cooperation in this area. The Protocol requires signatory states to adopt legislation criminalizing the activities defined in Article 3 of the Protocol.

The Protocol places significant emphasis on prevention, stating that "it is important

to address the factors that make people vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunities, through bilateral and multilateral cooperation" [5].

Although, as we have shown, this Protocol plays an important role among international instruments aimed at combating human trafficking and trafficking in persons for the purpose of organ removal, there are also critical views regarding the approach taken to address this phenomenon. Thus, some have argued that the Protocol has not proven effective due to non-compliance by signatory states and issues with its implementation, while others contend that the lack of concrete results stems from deficiencies in the definition and phrasing of concepts and terms. Thus, the aspects of criminal regulation of activities in this field are mandatory in nature, while the sections on prevention and victim assistance do not carry the same weight, remaining at the level of recommendations and highlighting the importance of the actions that must be undertaken by the signatory states [6, p.1339].

While the Palermo Protocol is the legal instrument that has served as the basis for efforts to harmonize legislation on human trafficking, *the Istanbul Declaration* plays this role in the field of organ trafficking. The Declaration is the result of the summit organized in April 2008 by the Transplant Society (SDT) and the International Society of Nephrology (ISN) in Istanbul. During this summit, the 151 participants—including figures from the scientific and medical fields, the field of ethics, and the social sphere, as well as government officials—established the content of the declaration, which was subsequently approved by medical societies and organizations involved in organ transplantation and procurement.

Given that remarkable progress has been made in the fight against organ trafficking since the year this declaration was adopted, a Declaration Stewardship Group was established, and in 2018 the Declaration was revised to reflect medical, legislative, and social advances in the field of organ transplantation and procurement.

The declaration also defines human trafficking for the purpose of organ removal as "the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, through abduction, fraud, deception, abuse of authority or of a position of vulnerability, or through the offer or acceptance of payments or benefits to secure the consent of a person having control over another person, for the purpose of organ removal". This definition is derived from the definition of human trafficking in the Palermo Protocol. As noted above, human trafficking for the purpose of organ removal is a form of human trafficking as defined by these two international legal instruments.

According to the Declaration, organ trafficking may involve the following activities: "(a) The removal of organs from living or deceased donors without valid consent or authorization, or in exchange for financial gain or comparable benefits for the donor and/or a third party; (b) any transportation, handling, transplantation, or other use of such organs; (c) the offering or solicitation of any undue advantage by medical personnel, public officials, or employees of private-sector entities to facilitate or carry out such removals or uses; (d) soliciting or recruiting donors or recipients, where such acts are performed for financial gain or comparable advantages; or (e) attempting to commit, aiding, or abetting the commission of any of these acts".

Crucial to the fight against organ trafficking are the principles outlined in the Declaration, namely that trafficking in human organs and trafficking in persons for the purpose of organ removal must be prohibited and classified as crimes, as well as the requirement that each state must adopt legislation regulating organ procurement and transplantation

in accordance with international standards [7].

At the European level, with regard to organ transplantation and procurement, a particularly important instrument is *the European Convention on Biomedicine*, also known as *the Oviedo Convention*, adopted by the Council of Europe on April 4, 1997.

The Convention includes a chapter dedicated to organ procurement, namely Chapter 6, titled "*Procurement of Organs and Tissues from Living Donors for Transplantation*", which sets forth the circumstances under which organ procurement from living donors may take place, with consent being an essential element to which reference is made. Chapter 7 of the Convention is also important in combating organ trafficking, as it prohibits financial gain in organ transplantation.

Because, in addition to establishing principles and prohibitions, robust legal protection is also necessary, Chapter 8 of the Convention establishes the obligation of states to adopt a legislative framework with appropriate sanctions to be applied in the event of violations of the relevant regulations [8].

Twenty years after this convention, in 2014, the Council of Europe adopted a new convention, *the Convention against Trafficking in Human Organs*, the content of which essentially reflects the same principles already listed and existing in other documents adopted at the global and European e levels, such as the prohibition of organ harvesting from donors without their free and informed consent, or the prohibition of profits from organ transplant activities.

The Convention also includes a chapter titled "*Substantive Criminal Law*," listing the acts that states will take measures to classify as crimes [9].

II. Regulation of Human Trafficking for the Purpose of Organ Removal and Organ Trafficking in Romania and the Republic of Moldova. Based on the international instruments mentioned above, states have adopted regulations regarding human trafficking and regulations regarding organ trafficking. Of particular importance for this study is the manner in which human trafficking for the purpose of organ harvesting is regulated, as there are no uniform regulations; instead, criminal provisions are contained either in the criminal code or in special and extra-criminal laws.

Legislative fragmentation regarding organ trafficking is evident in Romania's legal system.

For the first time in the Romanian legal system, human trafficking was regulated by Law No.678/2001, published in the Official Gazette of Romania, Part I, No.783 of December 11, 2001. The law dedicated a chapter to offenses in this field, divided into two sections: Offenses Related to Human Trafficking and Offenses Related to Human Trafficking [10].

Scholarly literature has noted that this legislative act, although it no longer includes offenses in the field of human trafficking or a definition of the concept of exploitation, remains "the primary criminal policy instrument regarding human trafficking," continuing to contain procedural provisions, regulations on victim protection, international cooperation, and the institutions responsible for addressing human trafficking [1, p.177].

With the entry into force of the new Criminal Code on February 1, 2014, offenses related to human trafficking were regulated under the provisions of the new Criminal Code.

As stated in the explanatory memorandum to the new Criminal Code, its adoption aimed to create a coherent legislative framework in criminal matters, avoiding unnecessary overlaps between existing provisions in the current Criminal Code and in special laws.

Another objective of the new code was to simplify substantive law provisions, with the aim of facilitating their uniform application, which would lead to the expeditious res-

olution of cases by the judicial authorities. Furthermore, the new Criminal Code was designed to transpose European Union regulations into national law and to harmonize the new criminal law with existing regulations in European countries, with a particular emphasis on ensuring compliance with requirements grounded in the fundamental principles of criminal law and respect for human rights [11].

Chapter VII of the new Criminal Code covers offenses related to the trafficking and exploitation of vulnerable persons, incorporating into this chapter provisions that were in force prior to the Code's adoption under Law No.678/2001 and Government Emergency Ordinance No.194/2002.

According to Article 210 of the Criminal Code, human trafficking is committed through: "the recruitment, transportation, transfer, harboring, or receipt of a person for the purpose of exploiting that person, committed: a) through coercion, abduction, deception, or abuse of authority; b) by taking advantage of that person's inability to defend themselves or express their will, or of their state of obvious vulnerability; c) by offering, giving, accepting, or receiving money or other benefits in exchange for the consent of the person who has authority over that person" [12].

Article 211 of the Criminal Code specifically criminalizes the trafficking of minors, carried out through the following alternative means: "The recruitment, transportation, transfer, harboring, or receipt of a minor for the purpose of exploitation is punishable by imprisonment for a term of 7 to 15 years and the deprivation of certain rights" [12].

The explanatory memorandum noted that the provisions criminalizing trafficking in persons, minors, and migrants had been reorganized for easier understanding and better alignment with other criminal provisions. However, it was acknowledged that no substantial changes had been made to the legal texts. The specialized literature has rightly noted the establishment of a more lenient penalty regime; however, this is a characteristic of all penalties in the Criminal Code that entered into force on February 1, 2014 [1, 179 p].

However, the specific sentencing guidelines for the crime of human trafficking have changed over time. Thus, while at the time the current Criminal Code was adopted the crime was punishable by imprisonment for 3 to 10 years, the current penalty is 5 to 15 years.

Regulations on human trafficking and child trafficking have been developed around the concept of exploitation, as defined by Article 182 of the Criminal Code. Exploitation of a person means: "a) forcing a person to perform labor or provide services;b) keeping a person in a state of slavery or other similar forms of deprivation of liberty or servitude; c) forcing a person into prostitution, into pornographic acts for the purpose of producing and distributing pornographic materials, or into other forms of sexual exploitation;d) forcing a person to beg; e) the illegal removal of human organs, tissues, or cells; f) forcing a person to commit acts provided for by criminal law" [12].

It is important for this study to note that the law defines "*the illegal*" removal of human organs, tissues, or cells as a form of exploitation. To determine whether a removal is illegal, it is necessary to understand the circumstances under which such removal is considered unlawful. In the following, we will present the framework of regulations regarding organ transplantation and removal, again a special law.

Following Romania's ratification of *the Council of Europe Convention on Action against Trafficking in Human Beings* (through Law No.300/2006), a new criminal offense was introduced: the use of services provided through the exploitation of a trafficked person (an offense required by Article 19 of the Convention). For example, the provision will apply to a person who agrees to receive an organ transplant, knowing that it was illegally

harvested from a victim of human trafficking, or to a person who agrees to use the forced labor imposed on such victims.

At the time the new Criminal Procedure Code was adopted, it was found that there were approximately 300 special or extra-criminal laws containing criminal provisions, with many overlapping provisions and discrepancies in penalties, even though the punishable acts were similar. Given the incorporation of certain provisions criminalizing specific acts into the Criminal Code, some criminal provisions in special laws were repealed as a result of the regulations introduced in the Criminal Code [13].

In this regard, Article 94 of Law No.187/2012, the law implementing the new Criminal Code, provided that Law No.678/2001 on the prevention and combating of human trafficking is amended, regarding the terms of the law, it is stated that as of the entry into force of the new Criminal Code: "a) 'trafficking in persons' means the acts provided for in Articles 210 and 211 of the Criminal Code; b) 'exploitation of a person' means the activities provided for in Article 182 of the Criminal Code; c) 'victim of human trafficking' means a natural person who is the passive subject of the acts provided for in Articles 210, 211, 264, and 374 of the Criminal Code or of an attempt to commit any of these acts, regardless of whether or not they participate in the criminal proceedings as an injured party". Consequently, the law provided for the repeal of Articles 12, 13, 14^1, and 15-19 of Law No.678/2001 [14].

It should be noted that the current Criminal Code also contains a provision which, although included in Chapter III—Offenses against Religious Freedom and Respect for the Deceased—regulates the illegal removal of tissues or organs. According to Article 384, "the unauthorized removal of tissues or organs from a corpse is punishable by imprisonment for a term of 6 months to 3 years or by a fine".

In addition to the above-mentioned regulations regarding human trafficking for the purpose of organ harvesting, Romanian legislation includes regulations on organ transplantation and harvesting. From a historical perspective of legislative regulations in Romanian law, as outlined at transplantation and organ removal were first regulated—albeit briefly—by Law No.3/1978 on public health care.

The law was repealed by the provisions of Law No.2/1998 on the procurement and transplantation of human tissues and cells, a law considered the first modern transplantation law in Romania [15].

Chapter IV of the law, titled "*Penalties*", provided that failure to comply with the law's provisions would result in disciplinary, financial, civil, administrative, or criminal liability, as applicable, without a clear distinction between the types of liability. The same chapter specified which violations of the law constituted criminal offenses, also establishing the specific limits of the penalties [16].

This has now been replaced by Title VI, "*The Procurement and Transplantation of Human Organs, Tissues, and Cells for Therapeutic Purposes*", of the Law No.95/2006 on Health Care Reform, which includes a detailed chapter on the transplantation of cells and tissues, and the regulations regarding organ transplantation have been updated. Law No.95/2006 of April 14, 2006, on health care reform is currently the framework legislation that regulates and penalizes offenses related to organ transplantation. These are set forth in Chapter V of the law, a chapter titled "Penalties". It can be observed that, although the chapter bears this title, it actually covers acts criminalized as offenses; the title appears to have been retained from the previous Law No.2/1998, in which this designation encompassed all possible types of sanctions for violations of legal regulations.

In its current form, Chapter V of Law No.95/2006 contains the following provision:

– Art. 154 (1): "The removal or transplantation of organs, tissues, or cells of human origin from living donors without consent given in accordance with the law constitutes a criminal offense and is punishable by imprisonment for a term of 2 to 7 years and the deprivation of certain rights. (2) An attempt is punishable.

– Art. 155: Taking a sample when doing so compromises a forensic autopsy requested in accordance with the law constitutes a crime and is punishable by imprisonment for a term of 6 months to 3 years or by a fine.

– At. 156 (1): The act of donating human organs, tissues, or cells for the purpose of obtaining material gain, for oneself or for another, constitutes a criminal offense and is punishable by imprisonment for a term of 3 months to 2 years or by a fine. (2) Coercing a person to donate human organs, tissues, or cells constitutes a criminal offense and is punishable by imprisonment for a term of 2 to 7 years and the deprivation of certain rights. (3) The publication or dissemination of advertisements regarding the donation of human organs, tissues, or cells, where such donation is intended to obtain material benefits for oneself or for another person, constitutes a criminal offense and is punishable by imprisonment for a term of 6 months to 3 years or by a fine.

– Art. 157 (1): Organizing or performing the procurement of human organs, tissues, or cells for transplantation, with the intent of obtaining material gain for the donor or the organizer, constitutes a criminal offense and is punishable by imprisonment for a term of 2 to 7 years and the deprivation of certain rights. (2) The purchase of human organs, tissues, or cells for the purpose of resale is also punishable by the penalty provided for in paragraph (1). (3) An attempt to commit this offense is punishable.

– Art. 158 (1): The importation into or exportation from the country of human organs, tissues, or cells without a special authorization issued by the National Transplant Agency constitutes a criminal offense and is punishable by imprisonment for a term of 2 to 7 years and the deprivation of certain rights. (2) An attempt is punishable" [17].

To understand that fragmentation within Romania's legal system is not unique, another example of legislative fragmentation is that of the Republic of Moldova's legislation. The law regulating human trafficking in the Republic of Moldova is Law No.241/2005, published on December 9, 2005, in the Official Gazette Nos. 164-167.

In light of the above, namely the importance of understanding legislative terms and concepts, Article 2 of the Law No.241/2005 defines the following main terms:

1) "*Human trafficking*: the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, through abduction, fraud, deception, abuse of power or of a position of vulnerability, or by giving or receiving payments or benefits of any kind to obtain the consent of a person having control over another person, for the purpose of exploitation;

2) *Child trafficking*: the recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation, even if these acts are not carried out using any of the means specified in paragraph 1);

3) *Exploitation of a person:* abuse of a person for the purpose of obtaining a profit, namely: a) compelling a person to perform certain work or provide services through the use of force, threats, or other means of coercion, contrary to legal provisions regarding working conditions, wages, health, and safety; b) keeping a person in slavery, subjecting them to practices similar to slavery, or using other methods to deprive them of their liberty; c) forcing a person into prostitution, to participate in pornographic performances for the purpose of producing, distributing, or circulating such material by any means, or to acquire, sell, or possess pornographic materials, or to engage in other forms of sexual

exploitation; d) forcing a person to undergo the removal of organs or tissues for transplantation or the removal of other parts of the human body; e) using a woman as a surrogate mother or for reproductive purposes; f) abusing the rights of a child for the purpose of illegal adoption; g) using a person in armed conflicts or in illegal military formations; h) use in criminal activities; i) forcing a person to beg; j) selling a person to another person; k) forcing a person to engage in activities that violate fundamental human rights and freedoms".

Article 3 of the Law No.241/2005 establishes the legal framework governing the prevention and combating of human trafficking and the protection of victims. This legal framework is provided by the Constitution of the Republic of Moldova, the international treaties to which the Republic of Moldova is a party, Law No.241/2005, as well as other normative acts regulating relations in this field. The wording acknowledges, with regard to the legislation of the Republic of Moldova, the existence of fragmented regulations included in numerous normative acts [18].

Although not explicitly mentioned in the legal framework for combating human trafficking, important regulations are found in the Criminal Code of the Republic of Moldova. This is only natural, as the Criminal Code is the primary law that defines crimes within every legislative system.

Article 165 of the Criminal Code of the Republic of Moldova defines human trafficking as follows: "(1) The recruitment, transportation, transfer, harboring, or receipt of a person for the purpose of commercial or non-commercial sexual exploitation, forced labor or services, slavery or conditions similar to slavery, use in armed conflicts or criminal activities, or the removal of organs or tissues for transplantation, committed through: a) the threat or use of physical or psychological violence not life-threatening or harmful to the person's health, including through abduction, the confiscation of documents, and servitude, for the purpose of recovering a debt whose amount is not reasonably established; b) deception; c) abuse of a position of vulnerability or abuse of power, or the giving or receiving of payments or benefits to obtain the consent of a person who has control over another person, is punishable by imprisonment for a term of 7 to 15 years". It is also important to note that the article establishes special limits on the penalties. Furthermore, the following paragraphs regulate aggravated forms of the offense, as well as a special ground for exemption from punishment "*for the victim regarding offenses committed by her in connection with her procedural status, if she has agreed to cooperate with the criminal investigation authority in the given case*".

Furthermore, Article 206 of the same Criminal Code criminalizes child trafficking. This consists of: "(1) The recruitment, transportation, transfer, harboring, or receipt of a child, as well as the giving or receiving of payments or benefits to obtain the consent of a person having control over the child, for the purpose of: a) sexual exploitation, whether commercial or non-commercial, in prostitution or in the pornography industry; b) labor or forced service; c) slavery or conditions similar to slavery, including in the case of illegal adoption; d) use in armed conflicts; e) use in criminal activities; f) removal of organs or tissues for transplantation; g) abandonment abroad. The specific range of punishment is imprisonment for 10 to 15 years".

One key difference between the legal frameworks of the Republic of Moldova and Romania is the inclusion in the Criminal Code of the Republic of Moldova of a provision that criminalizes the removal of human organs and tissues without the donor's freely given consent.

The heading of the article is "Coercion of a person to donate organs or tissues for

transplantation", and the acts criminalized by the law consist of: "(1) Coercing a person to donate organs or tissues for transplantation or for other purposes, committed through the use of violence or the threat of violence, is punishable by imprisonment for a term of 2 to 5 years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of up to 3 years. (2) The same act committed against a person whom the offender knew with certainty to be in a state of helplessness or in material or other dependence on him shall be punished by imprisonment for a term of 3 to 7 years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of 2 to 5 years. 1. The degree of harm caused by crimes against a person's life and health stems from the very nature of the social values that have been harmed or endangered. The mechanism for determining the degree of harm caused by the crime is stipulated in Article 15 of the Criminal Code. 2. The immediate legal object consists of social relations whose existence and normal functioning depend on the protection of a person's life or health. 3. The objective aspect of the offense is realized by compelling a person to undergo the removal of organs or tissues for transplantation or other purposes, committed through the use of violence or the threat of its use. The regulations are set forth in Law No.473-XIV of 25.06.1999 on the transplantation of human organs and tissues (Official Gazette No.94-95/474 of 26.08.1999) and Ministry of Health Order No.297 of 16.12.1999 on the implementation of the Law on the Transplantation of Human Organs and Tissues in the Republic of Moldova (Official Gazette No.29-30/99 of 16.03.2000). 4. According to existing regulations, the removal of organs or tissues for transplantation is permitted only if the donor has freely and voluntarily expressed their wish to do so in writing. 5. The victim of this crime may be any person selected by the perpetrator as a donor. The removal of organs and tissues from minors, or from persons suffering from AIDS, venereal diseases, or other infectious diseases that pose a danger to the life and health of the recipient, is not permitted. 6. Coercing a person into the removal of organs or tissues for transplantation involves the use of violence or the threat of its use" [19].

Another difference from Romanian legislation is that in the Republic of Moldova, Law No.42/2008 on the transplantation of human organs, tissues, and cells – stands as a special law, whereas regulations on transplantation and procurement are not conceived as parts of a special law in the field of health. However, as we noted in our analysis of Romanian regulations on organ transplantation and procurement, Law No.2/1998 was also conceived as a law regulating transplantation and procurement – a special law in this field.

According to Law No.42/2008, Article 27 criminalizes the pursuit of financial gain in the Republic of Moldova, while Article 28 criminalizes trafficking in human organs, tissues, and cells.

Article 27 prohibits the derivation of financial gain from the donation of human organs, tissues, or cells. However, it is not precluded that donors may receive compensation strictly limited to covering expenses and inconveniences, namely: "a) compensation for living donors in connection with loss of income and other justified expenses caused by the donation or related medical examinations; b) reimbursement of justified expenses for legal medical services or technical services related to the donation". Furthermore, the law stipulates that the donation and transplantation of organs, tissues, and cells may not be the subject of a material transaction. It is also prohibited to promote the need for organ, tissue, and/or cell transplantation for the purpose of proposing or obtaining financial profits or corresponding benefits.

Article 28 of the same legislative act prohibits trafficking in human organs, tissues,

and cells; however, it reiterates the wording of the preceding article, explicitly stating once again the prohibition on deriving financial gain or other benefits from trafficking in the human body and its parts.

The text expressly criminalizes the trafficking of human organs, tissues, and cells, and regarding its punishment, it refers to the provisions of criminal law [20].

Conclusions. An analysis of the regulations governing human trafficking for the purpose of organ harvesting, as well as organ trafficking, reveals distinct regulations regarding their specific activities. We believe that current international instruments, as well as national regulations that have been aligned with the principles set forth in these instruments, have not achieved their intended purpose. A considerable time has passed since the initial principles and regulations were established, yet the phenomenon is far from being understood and controlled. We cannot ignore the critical views regarding current regulations and must agree that a new international instrument is needed to combat organ trafficking. This instrument should take into account the shortcomings identified over time in understanding and regulating the phenomenon.

Regulations governing human trafficking for the purpose of organ harvesting and organ trafficking should be consolidated into a single regulatory framework, as these are "both manifestations of the organ shortage", and "treating human trafficking for the purpose of organ harvesting as a subset of human trafficking overlooks important differences" [6, p.1342].

Bibliographical references

1. Olaru C, Characteristics of Organized Crime in Romania, Bucharest: Hamangiu Publishing, 2015.
2. Zaharia G.C. Human Trafficking. Bucharest: G.H. Beck Publishing, 2012, p. 21.
3. Tabusca S.M. Human Trafficking – A Threat to National Security. Priorities of the European Union Strategy on the Eradication of Human Trafficking. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2780334 (accessed 19.04.2026).
4. United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol). Available: https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=38603 (accessed 19.04.2026).
5. Palermo Protocol: Summary. Available: https://eur-lex.europa.eu/RO/legal-content/summary/protocol-against-the-trafficking-of-people.html (accessed 19.04.2026).
6. Kelly E. International Organ Trafficking Crisis: Solutions Addressing the Heart of the Matter. Boston College International & Comparative Law Review. Available: https://bclawreview.bc.edu/articles/727/files/63b293afbb013.pdf. (accessed 19.04.2026).
7. Istanbul Declaration on Organ Trafficking and Transplant Tourism (2018 Edition). Available:https://www.declarationofistanbul.org/images/documents/doi_2018_Romanian.pdf (accessed 18.04.2026).
8. European Convention on Biomedicine, or the Oviedo Convention. Available: https://legislatie.just.ro/public/detaliidocument/27007. (accessed 18.04.2026).
9. Council of Europe Convention against Trafficking in Human Organs of March 25, 2015. Available: https://rm.coe.int/1680abceaf (accessed 18.04.2026).
10. https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=30767.
11. Explanatory Memorandum, New Criminal Code. Available: https://www.senat.ro/legis/PDF%5C2009%5C09L260EM.pdf (accessed 18.04.2026).
12. Romanian Criminal Code. Available: https://sintact.ro/legislatie/monitorul-oficial/codul-penal-din-2009-legea-nr-286-2009-16901302. (accessed 18.04.2026).

13. Explanatory Memorandum. Law on the Implementation of the Criminal Code and on the Amendment and Supplementation of Certain Legislative Acts Containing Criminal Provisions.
14. Law No.187/2012 on the implementation of Law No.286/2009 on the Criminal Code. Available: https://lege5.ro/Gratuit/gmztenjygy/legea-nr-187-2012-pentru-punerea-in-aplicare-a-legii-nr-286-2009-privind-codul-penal?pid=63051549 (accessed 20.04.2026).
15. https://transplant.ro/istoric/.
16. Law No.2 of January 8, 1998, on the procurement and transplantation of human tissues and organs. In: Official Gazette No.8 of 13.01.1998. Available: https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=566 (accessed 19.04.2026).
17. Law No.95/2006 on Health Care Reform. Available: https://lege5.ro/gratuit/g42tmnjsgi/legea-nr-95-2006-privind-reforma-in-domeniul-sanatatii (accessed 20.04.2026).
18. Law No.241/2005 of October 20, 2005, on the prevention and combating of human trafficking, published on December 9, 2005. In: Official Gazette No.164-167. Available: https://www.legis.md/cautare/downloadpdf/27478?__cf_chl_tk=lzat4cFkVmGwoJ64inppY4v000xuE4wJtheZLaifZ.E-1776710721-1.0.1.1-euXpMZ.9ItS3P8Z1r81Cctg3tQrf__Ft7gK1J2l2qTU (accessed 19.04.2026).
19. Criminal Code of the Republic of Moldova. Available: https://eresursedrept.wordpress.com/wp-content/uploads/2021/01/codul-penal-al-republicii-moldova-comentariu.-partea-speciala.pdf (accessed 19.04.2026).
20. Law No.42 of March 6, 2008, on the Transplantation of Human Organs, Tissues, and Cells, published on April 25, 2008. In: Official Gazette No.81. Available: https://transplant.gov.md/sites/default/files/document/attachments/lege_nr._42.pdf (accessed 19.04.2026).

CZU 343.21(478) **DOI: https://doi.org/10.5281/zenodo.20812423**

THE THEORETICAL AND PRACTICAL APPROACH TO THE INSTITUTION OF DETENTION THROUGH THE LENS OF THE PURPOSE AND FUNCTIONS OF CRIMINAL LAW IN THE REPUBLIC OF MOLDOVA

Ana ZABULICA,
Head of Human Resources Department,
"Alecu Russo" State University of Bălţi,
PhD student,
"Ștefan cel Mare" Academy,
Republic of Moldova
ORCID: 0009-0000-1983-3705

Abstract

The freedom of any human being is a right guaranteed by the state under the supreme law. No one may be deprived of their freedom, except under the exhaustive conditions provided by law, because: „Libertas inaestimabilis res est". The parallel between freedom and the limitation of this right is drawn through the institution of detention. The Constitution of the Republic of Moldova stipulates, in Art. 25 para. (2), inter alia, that detention is permitted only in cases and in accordance with the procedure provided by law. The institution of detention plays an essential role in achieving the purpose of criminal law.

The article analyzes the legal nature of detention, its correlation with the functions of criminal law and the way in which it is applied in practice. Both theoretical aspects and practical issues are highlighted, in the context of respect for personal liberty.

Keywords: freedom, detention, probable cause, crime, reasonable suspicion.

ABORDAREA TEORETICO-PRACTICĂ A INSTITUȚIEI REȚINERII PRIN PRISMA SCOPULUI ȘI A FUNCȚIILOR DREPTULUI PENAL ÎN REPUBLICA MOLDOVA

Abstract

Libertatea ființei umane este un drept garantat de stat prin legea supremă. Nimeni nu poate fi lipsit de libertatea sa, doar în condițiile exhaustive prevăzute de lege, căci: „Libertas inaestimabilis res est". Paralela între libertate și limitarea acestui drept este trasată prin intermediul instituției reținerii în mod imperativ. Constituția Republicii Moldova stipulează la Art. 25 alin. (2) inter alia că reținerea este permisă numai în cazurile și în conformitate cu procedura prevăzută de lege. Instituția reținerii are un rol esențial în realizarea scopului dreptului penal.

Articolul analizează natura juridical a reținerii, corelația acesteia cu funcțiile dreptului penal și modul în care este aplicată în practică. Sunt evidențiate atât aspectele teoretice, cât și problemele practice, în contextul respectării libertății persoanei.

Cuvinte-cheie: libertate, reținere, motive verosimile, infracțiune, rezonabilitatea suspiciunii.

Introduction. The theoretical and practical approach to the institution of detention through the lens of the purpose and functions of criminal law in the Republic of Moldova represents a particularly important aspect in the context of strengthening the rule of law and harmonizing the national legislation of the Republic of Moldova with European standards. The institution of detention is of special importance and constitutes a direct interference with the fundamental right to liberty, as a primary principle in a state governed

by the rule of law. Therefore, an in-depth analysis of the subject is required, both from a theoretical and practical perspective. The research examines the institution of detention from the perspective of the purpose and functions of criminal law, as well as identifies the existing issues in its application.

The present research aims to determine the following aspects:

- Analysis of the normative framework governing the institution of detention in the Republic of Moldova;
- Examination of the purpose of detention;
- Identification of the functions of criminal law achieved through the application of the institution of detention;
- Analysis of the legal conditions and grounds for the application of detention;
- Examination of judicial practice and the problems encountered in the application of detention;
- Identification of possible legislative gaps and inconsistencies with international standards (e.g., the ECHR);
- Formulation of *de lege ferenda* proposals for improving the regulation of the institution of detention.

Methods and materials applied. Within this study, general scientific methods were used, such as the systemic, comparative, logical, historical, and analytical methods, which allowed for the examination of the institution of detention from a complex perspective, highlighting its importance through the lens of the purpose and functions of criminal law, and subsequently enabling the formulation of well-grounded conclusions on the subject addressed.

The legal framework of the analyzed matter includes: the Constitution of the Republic of Moldova; the Criminal Code of the Republic of Moldova; the Criminal Procedure Code of the Republic of Moldova; the Law on the Status of the Police; the Law on Special Investigative Activity; the European Convention on Human Rights; the case law of the European Court of Human Rights; the International Covenant on Civil and Political Rights; and UN standards regarding deprivation of liberty.

The research is based on the study of theoretical, legislative, and normative materials, as well as published sources regarding national practice and the case law of the European Court of Human Rights. The obtained results provide the opportunity to complement and further develop the ideas established in previous studies dedicated to detention. Additionally, within the research, statistical reports prepared by the National Administration of Penitentiaries regarding persons in pre-trial detention held in penitentiary institutions were analyzed.

Discussions and results obtained. The institution of detention represents an essential pillar in a state governed by the rule of law, as it ensures the necessary balance between the public interest in combating crime and the protection of fundamental human rights and freedoms. It provides state authorities with a legal instrument for prompt and necessary intervention in order to guarantee and maintain social balance and to delineate rights and obligations in accordance with the law.

Based on the assertion that „Everyone has the right to life, *liberty* and security of person", as stipulated in the Universal Declaration of Human Rights (adopted and proclaimed on December 10, 1948, by the UN General Assembly, Art. 3), it is emphasized that freedom is an essential social value promoted, developed, and protected by legal norms, yet it is not absolute, but relative [12]. Individual liberty is a relative right in situations where it is limited as a consequence of legal liability for a committed act.

Freedom cannot be viewed separately from responsibility, since the exercise of individual rights implies respect for legal norms and for the rights of others. In the absence of this correlation, liberty risks becoming distorted, affecting the rule of law and social balance. It is also necessary to mention that liberty can be approached from two perspectives: a general one (the possibility of action and movement) and an individualized one, as a right regulated by legal norms, hence the concept of the inviolability of the person.

Individual liberty (*status libertatis*), as a primary objective, is addressed in this study through the institution of detention, since above any individual liberty stands the safety and protection of society. Liberty as a legal concept has attracted interest over the years and has been examined and regulated in various normative acts. Among the most relevant for this study are: The Constitution of the Republic of Moldova, in Chapter II, enshrines fundamental rights and freedoms, reiterating the importance of guaranteeing the protection of fundamental social values, which are also reflected in the purpose of criminal law, namely, the protection of the individual, society, and the state [1]. The author Gheorghe Gladchi in his work "*Criminal Law. General Part*", states that the purpose of criminal law is determined by the need to protect social values and the legal order against crimes and to prevent the commission of new offenses [14]. If we were to specify the three pillars upon which the purpose of criminal law is based, we would move from the particular to the general: from the individual to society and then to the state. The Criminal Code of the Republic of Moldova, in Article 2, stipulates: (1) Criminal law protects persons from crimes; a person's rights and freedoms; property; the environment; constitutional order; the sovereignty, independence, and territorial integrity of the Republic of Moldova; the peace and security of humanity as well as the rule of law in its entirety. (2) Criminal law also aims to prevent the commission of new crimes. Thus, the purpose of protection against crime, including the protection of the individual and their rights and freedoms, is achieved through the institution of detention [2]. The legislation of the Republic of Moldova does not exhaustively specify the categories of state representatives who may detain a person. The detention of an offender represents a right for citizens, not an obligation; however, for persons entrusted with maintaining public order, it constitutes a duty.

The purpose of criminal law and its relevance to the institution of detention are fundamental and consist in protecting the individual, society, and the state against crime, as well as ensuring that those who commit offenses are held accountable proportionally to the act committed. Based on this purpose, we distinguish: the protection of the individual; the protection of society; and the protection of the state. According to Article 37 of the Criminal Code, an act provided for by criminal law does not constitute an offense if it is committed for the purpose of detaining a person who has committed a crime and handing them over to law enforcement authorities [2]. Through the provisions stipulated in the Criminal Code, the legislator emphasizes the social approval of detaining a person who has committed a crime, even if harm is caused to the detained individual. This social approval, as reflected in the legal norm, allows citizens to act actively and responsibly in preventing further crimes and to participate in apprehending offenders, demonstrating civic responsibility. In cases of prompt and proper action, evidence at the scene of the crime may be preserved intact, ensuring the proper application of criminal sanctions in accordance with the committed act. Moreover, further offenses may be prevented.

Authors Maria Orlov and Ștefan Belecciu argue that responsibility means the conscious awareness of what is being done, why it is being done, and what the possible consequences of that action are [18]. Responsibility implies assuming one's actions and their consequences – the point of intersection between the two. A conscious and responsible

society could reduce the number of crimes and ensure lasting security based on mutual respect, education, and active citizen involvement. However, indifference or negligence often leads to the commission of new offenses and an increase in criminality. Typically, awareness of the risks involved in promptly intervening to detain an offender varies from person to person: some may act courageously and assume responsibility to intervene, while others may refrain from action out of fear. The assumption of responsibility must align with an individual's courage and willingness to contribute to society; however, for law enforcement representatives, it is a duty arising from their professional responsibilities.

According to the law, any person suspected of committing a crime may be detained only if the conditions established by law are met. ***The purpose of criminal law***, as reflected in the case law of the Supreme Court of Justice (SCJ) and in legislation, is to protect the individual, society, and the state against crime. It aims at the fair application of the law, so that offenders are punished according to their guilt, while innocent persons are not held liable. At the international level, the Republic of Moldova undertakes to respect the international treaties to which it is a party, and in cases where inconsistencies arise between international human rights treaties and domestic laws, international regulations take precedence.

With direct reference to the subject addressed, the European Convention on Human Rights, in Article 5, stipulates the right to liberty and security [9]. This right is not absolute but relative; thus, when the limits permitted by law are exceeded, the institution of detention intervenes and restricts the individual's liberty and security. The limitation of liberty occurs through the detention of a person who has committed an offense, while security may be restricted through harm caused to the detained person at the moment of detention. The purposes of criminal law aim at protecting supreme values such as: the protection of the individual and their rights and freedoms, property, the environment, public order, state security, and the entire legal order, as well as the ***prevention of crime.*** The prevention of crime comprises two important vectors: first, preventing the commission of new offenses, and second, discouraging individuals from engaging in acts that fall under criminal law. Thus, we distinguish between *general prevention*, which deters members of society from committing crimes through the application of criminal sanctions, and *special prevention*, namely the detention of a person who has committed an offense and preventing them from committing further crimes. In this way, the institution of detention directly contributes to achieving the purpose of criminal law, being a mechanism of rapid and effective intervention. According to Article 2 para. (1) of the Criminal Code, the purpose of criminal law is to protect against crimes the individual, their rights and freedoms, property, the environment, the constitutional order, sovereignty, independence and territorial integrity of the Republic of Moldova, peace and security of humanity, as well as the entire legal order. Therefore, the purpose of criminal law merges with its functions [2].

The functions of criminal law and their reflection in the institution of detention represent a set of actions manifested through the role of ensuring the rule of law, preventing the commission of new crimes, and guaranteeing the efficient conduct of criminal proceedings. At the same time, detention constitutes a means of legal coercion that must be applied with strict respect for fundamental rights and freedoms. It should be noted that the functions of criminal law are characterized by their scope of applicability, for example:

- *Protective function*, which ensures the safeguarding of social values and social relations against crime by establishing penalties for offenders;
- *Preventive function*, which consists in the prevention of the commission of new

offenses both by individuals who have previously committed criminal acts and by those who might or are predisposed to commit crimes. It should be noted that the preventive function establishes a form of social control over individual conduct and aims to reduce and discourage the occurrence of criminal acts;

- *Encouraging function*, which is particularly relevant in the context of detention, as it motivates civil society to contribute to maintaining the rule of law (including through personal involvement in apprehending offenders) and to preventing crime, while also strengthening trust in competent authorities and encouraging individuals to adopt lawful behavior by becoming aware of the legal consequences of illicit acts;

- *Regulatory function*, which consists of legal norms that explicitly establish rules of conduct, both prohibitive and permissive;

- *Educational function*, which aims to form and consolidate conduct consistent with legal norms by raising legal awareness within society, so that the institution of detention has not only a coercive character but also a preventive and formative one, encouraging both individuals and society to understand the importance of respecting the law and the consequences of its violation;

- *Repressive function*, which involves the application of coercive measures against individuals who have committed crimes in order to restore the disrupted legal order, sanction unlawful conduct, and prevent its recurrence. In this regard, the institution of detention serves as a legal instrument ensuring the prompt reaction of society/the state to criminal acts and immediate intervention in apprehending offenders, facilitating their criminal liability.

By reiterating the importance of each of the functions mentioned above, we highlight the mechanism of criminal law in achieving the protection of fundamental social values and ensuring the rule of law, operating as a unified and interdependent system.

Analysis of the Conditions and Legal Grounds for the Application of Detention from the Perspective of Article 37 of the Criminal Code of the Republic of Moldova. The provision stipulates that: " An act set forth in criminal law and committed in order to seize a person who has committed a crime and surrender them to law enforcement bodies shall not be considered a crime" [2].

The legislator highlights the following aspects: 1. The social approval of the detention of a person who has committed a crime; 2. Detention does not constitute an offense if its purpose is to hand the person over to law enforcement authorities; 3. The prevention of the commission of new offenses by the detained person. The detention of an offender is an absolutely necessary element in the fight against crime.

The author, Xenofon Ulianovschi, states that: "the detention of a person who has committed an offense is understood as the actions of citizens involving the causing of harm to that person in connection with their active resistance and their refusal to be brought before the competent state authorities" [21]. The author's opinion highlights the possibility of causing harm to the detained person; we support this idea only in the context where the harm is the result of a necessary and proportionate action to immobilize the person.

Thus, causing harm is justified only if:

- There is an evident criminal act;
- The person offers real physical resistance;
- There are no other less harmful means to carry out the detention;
- The action is proportional to the concrete danger of the situation.

According to certain studies [22], the detention of persons who have committed of-

fenses is, to a large extent, carried out by the victims themselves. In such circumstances, they detain the individuals and bring them to law enforcement authorities. The detention of an offender does not constitute an obligation but a subjective right of every person. Indifference leads to an increase in criminality and to violations of the rule of law.

According to Article 168 para. (1) of the Criminal Procedure Code, anyone has the right to apprehend and forcibly bring to the police or another public authority a person caught in the act of committing a crime or who has attempted to hide or flee immediately after committing the offense [3].

For police officers, the detention of an offender is a direct obligation arising from their functional duties, and failure to fulfill or improper fulfillment thereof entails disciplinary or even criminal liability in certain situations. In accordance with the provisions of the Law on Police Activity and the Status of the Police Officer No.320 of 27.12.2012 (with subsequent amendments and additions), it is stipulated that every police officer, throughout the entire territory of the country, regardless of the position held, location, whether on duty or off duty, if they become aware of circumstances or acts that endanger the rule of law, the life or health of persons, or other social values, is obliged to notify the nearest police subdivision and "*to take all possible measures*" to prevent and stop the offense or contravention and to identify the offender, locate eyewitnesses, and secure the scene where the event occurred [5].

The authors Tudor Osoianu and Mihaela Vidaicu, note that one of the most problematic measures taken in exceptional cases by the police, is the detention of a person suspected of committing a crime. The efforts made by authorities to improve the legal framework regarding detention, the adoption of new laws and regulations, as well as their amendment and supplementation, are not sufficient to ensure the effective realization of rights [19].

The theoretical approach to the institution of detention, through the perspective of the purpose and functions of criminal law in the Republic of Moldova, is outlined in legal norms, which provide for its intervention to ensure the proper conduct of detention and aims to preserve the integrity of the person who has committed the criminal act and the scene of the crime, as well as to prevent the commission of other offenses. In contrast, the practical approach to the institution of detention is not fully clarified, being marked by certain gaps and difficulties in application, generated both by the non-uniform interpretation of legal norms and by the challenges faced by criminal investigation bodies in ensuring a balance between procedural efficiency and the guarantee of fundamental human rights. In practice, the institution of detention raises a number of issues related to the effective application of criminal law norms. One of the main difficulties lies in the assessment of the grounds for detention, which, although provided by law, allow for a certain margin of discretion both on the part of civil society and criminal investigation bodies. This discretion may generate the risk of abuses or unjustified actions, especially in situations where there is insufficient evidence to substantiate a reasonable suspicion.

On the one hand, Article 37 of the Criminal Code stipulates that: "an act set forth in criminal law and committed in order to seize a person who has committed a crime and surrender them to law enforcement bodies shall not be considered a crime", thus providing the possibility to detain a person who has committed an offense; on the other hand, in practice, deficiencies are sometimes observed in the respect of the guarantees and rights of the detained person [2].

However, it should be noted that priority is given to the act of detaining the person who has committed the offense at that moment, *rather than* to the right to liberty guar-

anteed by the state to the offender. The interests of an individual who has committed a criminal act are subordinated to the general interest of societal security, and the person carrying out the detention must assess the factual situation firmly and correctly. Although the institution of detention is well defined at the theoretical and normative levels, its efficiency and legitimacy depend essentially on how it is applied in practice. Therefore, a more rigorous correlation between legal norms and practical realities is necessary in order to ensure a fair balance between the public interest in combating crime and the protection of fundamental individual rights.

Judicial practice highlights the importance of complying with the standards of the European Convention on Human Rights. The Republic of Moldova has been convicted in numerous cases for violations of the right to liberty and security, which reveals the need to improve internal mechanisms. Since September 12, 1997, the European Court of Human Rights (ECHR) has been able to examine applications lodged against the Republic of Moldova. Thus, it has now been 29 years since the European Court of Human Rights has been examining cases against the Republic of Moldova. A synthesis of convictions carried out by the Legal Resources Centre (LCRM) shows that 568 judgments have been delivered, in which 730 violations of the European Convention on Human Rights were found. Almost one third of these violations – 229 out of 730 – concern the right to a fair trial. Other violations identified by the ECHR include the prohibition of torture (23.4%); the right to liberty and security (14.5%); the right to an effective remedy (8.9%); detention in poor conditions (6.6%); and ill-treatment (5.4%). In this context, 14.5% – representing violations of the right to liberty and security – can still be considered a significant proportion, indicating that the Republic of Moldova faces deficiencies in this area.

The main causes of convictions at the ECHR involving the Republic of Moldova refer to violations of Article 5 §1 – namely, the lack of reasonable suspicion, where detention was not based on sufficient evidence. According to the Guide on Article 5 of the Convention – Right to Liberty and Security: "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent his committing an offense or fleeing after having done so" [10].

According to the wording of the provision, we derive the idea that a person may be deprived of the right to liberty if there are plausible reasons to suspect that they have committed an offense, or when there are reasonable grounds to believe it is necessary to prevent them from committing an offense or fleeing after committing one. Thus, priority is given to the administration of justice and the protection of social values, while detention may be ordered only where there are clear and well-justified grounds, based on objective and verifiable data. Therefore, detention is an exception to the general rule. In this regard, particular importance is given to the notion of "plausible reasons", which implies the existence of a reasonable suspicion based on solid evidence. A person may be detained at the moment of committing the offense or immediately thereafter, if all evidence demonstrates the involvement of the detained person in the commission of the criminal act.

A study conducted by Daniel Goinic and Vladislav Gribincea (Violations found by the ECHR in respect of the Republic of Moldova, 12 September 1997 – 11 September 2022) highlights statistics regarding violations of *the right to liberty and security* (Article 5 ECHR) – approximately 106 violations (14.5%) [15]. Thus, even though the Republic of Moldova has been condemned by the ECHR in this area, the subject remains relevant and does not lose

its importance.

Several important cases against the Republic of Moldova addressing the subject matter, namely Article 5 of the Convention – the right to liberty and security, include: **Șarban *v. Moldova*** (Application No.3456/05), 4 October 2005, judgment final on 04.01.2006 – allegation of a violation of Article 5 § 3 (insufficient reasons invoked by the courts when applying pre-trial detention and decisions taken by a judge without competence to order his release); ***Becciev v. Moldova*** (Application No.9190/03), 4 October 2005, judgment final on 04.01.2006 – allegation of a violation of Article 5 § 3 (insufficient reasons invoked by the courts when applying pre-trial detention) and Article 5 § 4 (refusal to hear a witness); ***Cebotari v. Moldova*** (Application No.35615/06), 13 November 2007, judgment final on 13.02.2008 – allegation of a violation of Article 5 (the applicant alleged that detention was used for abusive purposes); ***Leva v. Moldova*** (Application No.12444/05), judgment final on 15 December 2009 (the applicants complained under Article 5 § 1 of the Convention that they had been unlawfully deprived of liberty).

The analysis of the case-law of the ECHR highlights that the main causes of the Republic of Moldova's convictions in matters of detention derive from the formal or insufficiently reasoned nature of decisions, the lack of effective procedural safeguards, and inadequate conditions of detention. These deficiencies indicate the existence of systemic problems in the application of the institution of detention, which affect the balance between the need to ensure the proper conduct of criminal proceedings and the respect for fundamental human rights. In the case-law of the ECHR, the notion of the reasonableness of suspicion or plausible grounds to suspect that the person in respect of whom a detention decision is taken has committed an offense is frequently applied. This is assessed on the basis of facts or information capable of convincing an objective observer that the individual concerned may have committed the offense.

Another analysis of data carried out on the basis of statistical reports provided by the National Administration of Penitentiaries of the Republic of Moldova demonstrates the dynamics of persons in pre-trial detention held in penitentiary institutions: 1) 01.01.2024 – 325; 2) 31.12.2025 – 504; 3) 31.03.2026 – 558.

The analysis of statistical data highlights an upward trend, indicating a fluctuating evolution in the number of persons held in pre-trial detention in penitentiary institutions of the Republic of Moldova. This dynamic reflects both variations in the criminal phenomenon and the particularities of criminal policy and judicial practice in the application of detention measures. The institution of detention is of particular importance in a state governed by the rule of law, representing one of the essential measures that ensures the prevention of a person from evading criminal prosecution or trial, as well as preventing the commission of other offenses. It must be applied with strict respect for legal guarantees and fundamental human rights. A relevant example illustrating the practical role of the institution of detention is the recent case of a detainee serving a sentence in Penitentiary No.2 – Lipcani, who escaped on the night of 5 to 6 April 2026. The escape occurred from an open-type sector located outside the guarded perimeter and was discovered during routine checks [2].

The prompt reaction of the authorities – including the National Administration of Penitentiaries, the Briceni Police Inspectorate, and the "Lipcani" Border Police Sector – led to the immediate launch of search operations, including the use of modern surveillance tools such as drones. Within just a few hours, the escaped person was located near the village of Beleavinți and was detained without incident. This case concretely illustrates the function of the institution of detention in restoring the violated rule of law and bring-

ing the individual back under state authority. It also highlights the operational nature and the need for rapid intervention by competent authorities in escape situations in order to prevent potential social risks. At the same time, the act of escape entails criminal liability, being incriminated under Article 317 of the Criminal Code of the Republic of Moldova, which justifies the application of new procedural measures, including the detention of the person for the purpose of documenting the committed offense [2]. In conclusion, the institution of detention not only serves as a means of legal coercion but also constitutes an indispensable mechanism for protecting public order, demonstrating its effectiveness in concrete situations such as the one analyzed.

Conclusion. In conclusion, the institution of detention represents an essential instrument aimed at protecting the rule of law and fundamental social values by detaining individuals who have committed offenses. However, the practical importance of the institution of detention must be strictly correlated with compliance with procedural guarantees and fundamental human rights, as any deviation may affect not only the legality but also the fairness of the entire criminal process. The subject addressed highlights the existence of significant dysfunctions in the application of detention, such as its excessive use, failure to comply with legal time limits, or its transformation into an instrument of psychological pressure. Such practices contradict fundamental principles, including the presumption of innocence and the right to defense, and are incompatible with the requirements of a fair trial, as also established in the case-law of the European Court of Human Rights, which requires that any deprivation of liberty be lawful, necessary, and proportionate.

Although the existing legal framework generally provides adequate benchmarks, problems arise at the level of its interpretation and application. In this regard, a critical and coherent approach is required, aimed at standardizing judicial practice and strengthening control mechanisms. The role of courts, prosecutors, and oversight bodies thus becomes decisive in preventing abuses and ensuring respect for the rights of detained persons.

From *de lege ferenda* perspective, several proposals may be formulated, including: further clarification of the grounds for detention in order to reduce the margin of interpretation; informing society regarding the necessity of active involvement, to the extent possible (taking into account health status, correct assessment of factual and legal circumstances, etc.) in the detention of a person who has committed an offense; promoting training sessions for law enforcement bodies regarding detention cases, including clarification of situations of unlawful or abusive detention; developing effective mechanisms for monitoring compliance with the rights of detained persons; and creating an institution for monitoring and reporting detention cases, either by representatives of civil society (to identify the degree of public involvement) or by state authorities, which would track the entire trajectory from the moment of factual detention until the final resolution of each case.

The institution of detention is an indispensable instrument of criminal law, contributing to the realization of its purpose and functions. However, its effectiveness depends on strict compliance with the principles of legality, proportionality, fairness, and respect for fundamental rights. A balanced approach between the need to combat crime and the protection of individual liberty is essential for the functioning of a criminal justice system in accordance with both national and international legal standards.

Bibliographical references

1. Constituția Republicii Moldova, adoptată la 29.07.1994. Disponibil: https://presedinte.md/rom/constitutia-republicii-moldova.

2. Codul penal al Republicii Moldova, nr. 985-XV din 18.04.2002. Disponibil: https://www.legis.md/cautare/getResults?doc_id=150640&lang=ro#.
3. Codul de procedură penală al Republicii Moldova, nr. 122-XV din 14.03.2003. Disponibil: https://www.procuratura.md/en/despre-noi/acte-normative.
4. Legea privind activitatea specială de investigații, nr. 59 din 29.03.2012. Disponibil: https://www.legis.md.
5. Legea cu privire la activitatea poliției și statutul polițistului, nr. 320 din 27.12.2012. Disponibil: https://gov.md/sites/default/files/Filepdf/nu-1029-mai-2024-ajust.pdf.
6. Administrația Națională a Penitenciarelor. Date privind persoanele arestate preventiv și deținute. Disponibil: https://anp.gov.md.
7. Administrația Națională a Penitenciarelor. Raport statistic. Date statistice. Disponibil: https://anp.gov.md/raport-statistic-date-statistice.
8. Centrul de Resurse Juridice din Moldova. Rapoarte și analize juridice. Disponibil: https://crjm.org.
9. Convenția Europeană a Drepturilor Omului, adoptată la 04.11.1950, Roma. Disponibil: https://www.echr.coe.int.
10. Curtea Europeană a Drepturilor Omului. Ghid privind articolul 5 din Convenția Europeană a Drepturilor Omului. Disponibil: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_5_rum.
11. Curtea Europeană a Drepturilor Omului. Jurisprudența CtEDO. Disponibil: https://hudoc.echr.coe.int.
12. Declarația universală a drepturilor omului, adoptată la 10.12.1948. Disponibil: https://www.un.org.
13. Pactul Internațional cu privire la Drepturile Civile și Politice, adoptat la 16.12.1966. Disponibil: https://www.ohchr.org.
14. Europa Liberă Moldova. În 25 de ani R. Moldova a fost condamnată în peste 560 de hotărâri ale CtEDO. Disponibil: https://moldova.europalibera.org/a/%C3%AEn-25-de-ani-r-moldova-a-fost-condamnat%C4%83-%C3%AEn-peste-560-de-hot%C4%83r%C3%A2ri-ale-ctedo-/32029613.html.
15. Gladchi, G. Drept penal. Partea generală. Volumul I: Teoria infracțiunii. Ediția a III-a. Chișinău, 2023, p. 17.
16. Goinic D., Gribincea V. Violările constatate de CtEDO în privința Republicii Moldova 12 septembrie 1997 – 11 septembrie 2022. Disponibil: https://crjm.org/wp-content/uploads/2022/09/Sinteza-Violarilor-CEDO-de-catre-RM.pdf.
17. Gribincea O., Hriptievschi N., Rotaru V., Vidaicu M., Zaharia V. Cercetarea cu privire la instituția reținerii în Republica Moldova. Chișinău: Editura Cartier, 2011. Disponibil: https://soros.md/wp-content/uploads/2022/07/Cercetare-retinere.pdf.
18. Organizația Națiunilor Unite. Regulile minime standard pentru tratamentul deținuților (Regulile Nelson Mandela). Disponibil: https://www.unodc.org.
19. Orlov M., Belecciu Șt. Drept administrativ. Chișinău: Elena-V.I., 2005, p. 117.
20. Osoianu T., Vidaicu M. Reținerea persoanei de către poliție. Concluziile unei cercetări. Chișinău: Editura Cartier, 2012. Disponibil: https://icjp.asm.md/sites/default/files/publicatii/retinerea_persoanei_de_catre_politie._concluziile_unei_cercetari.pdf.
21. TV Nord. Deținut evadat la Lipcani, prins în câteva ore. Disponibil: https://tvn.md/detinut-evadat-la-lipcani-prins-in-cateva-ore/.
22. Ulianovschi X. Starea de extremă necesitate și reținerea infractorului. În: Revista Națională de Drept, 2015, nr.8.
23. Баулин Ю. Право граждан на задержание преступника. Харьков, 1986, с.48.

CZU: 343.54:004.056 **DOI: https://doi.org/10.5281/zenodo.20812749**

DELIMITATION OF THE OFFENSE OF INDUCEMENT, DETERMINATION OR FACILITATION THE PROVISION OF ONLINE SEXUAL SERVICES FROM HUMAN TRAFFICKING AND INVOLVING A CHILD IN PORNOGRAPHIC PERFORMANCES

Dan FURCULIȚA,
PhD Student,
State University of Moldova,
Trainee, National Institute of Justice,
Candidate for the Position of Prosecutor
ORCID: 0009-0004-2928-5705

Abstract

Online streaming, or more recently live streaming (in real time), viewed as an expression of digital sexuality, came under the scrutiny of the criminal law of the Republic of Moldova following the amendments adopted in 2022 and entered into force in 2023 to the Criminal Code through the introduction of Art. 2201, which sanctions acts of inducement, determination or facilitation the provision of online sexual services. The new regulation generated a series of discussions and ambiguities regarding its practical application, especially from the perspective of official legal qualification.

One aspect that needs clarification in this context is the delimitation of this offense from other criminal acts. The very text of Art. 2201 of the Criminal Code expressly establishes the delimitation of the offense of inducement, determination or facilitation the provision of online sexual services from other criminal acts [...] "if the act does not meet the elements of trafficking in human beings or child pornography".

More recently, as a result of the latest amendments to the Criminal Code in 2026, the legislator removed the reference to child pornography and introduced the offense of participation of a child in pornographic performances – Art. 2084 Criminal Code of Republic of Moldova.

Keywords: online streaming, sexual services, pornographic performances, delimitation, trafficking, sexuality.

DELIMITAREA INFRACȚIUNII DE ÎNDEMN, DETERMINARE SAU ÎNLESNIRE LA PRESTAREA SERVICIILOR SEXUALE ONLINE DE TRAFICUL DE FIINȚE UMANE ȘI PARTICIPAREA UNUI COPIL LA SPECTACOLE PORNOGRAFICE

Abstract

Streaming-ul online sau mai recent streaming-ul live (transmisia în direct), privit ca o formă de manifestare a sexualității digitale, a intrat în sfera de reglementare a legii penale a Republicii Moldova ca urmare a modificărilor operate în anul 2022 și intrate în vigoare în anul 2023 în Codul penal, prin introducerea Art. 2201, care sancționează faptele de îndemn, determinare sau înlesnire la prestarea serviciilor sexuale online. Noua reglementare a generat un șir de discuții și neclarități privind aplicarea sa în practică, în special din perspectiva calificării juridice oficiale.

Un aspect ce necesită a fi clarificat în acest context îl constituie delimitarea acestei infracțiuni de alte fapte. Însăși în textul dispoziției prevăzute la Art. 2201 Cod penal este prevăzută în mod expres delimitarea infracțiunii de îndemn, determinare sau înlesnire la prestarea serviciilor sexuale online de alte fapte [...] „dacă fapta nu întrunește elementele traficului de ființe umane sau ale pornografiei infantile".

Mai nou, în urma modificărilor recente operate la Codul penal în anul 2026, legiuitorul a exclus referirea la pornografia infantilă și a introdus infracțiunea de participare a copilului la spectacole pornografice – Art. 2084 Cod penal Al Republicii Moldova.

Cuvinte-cheie: streaming-ul online, servicii sexuale, spectacole pornografice, delimitare, trafic, sexualitate.

Introduction. The offense provided for by Art. 220[1] of the Criminal Code of the Republic of Moldova, hereinafter (CC RM), was introduced into the criminal law as a result of the adoption and entry into force of Law No.316 of 17 November 2022 "*for the amendment of certain normative acts (ensuring the rights of victims in cases of offenses concerning sexual life and domestic violence)*". In the explanatory note to Draft Law No.316 of 16 November 2022 was stated the need to amend the national regulatory framework to new challenges regarding activities carried out in the online environment, highlighting the conceptual and legal aspects of online sexual activities [1].

The Special Part of the CC RM regulates a wide range of offenses covering the entire spectrum of protection of social relations, and in this sense, the offense provided for in Art. 220[1] CC RM presents well-established individual structural particularities, these being grounded in its constitutive elements: object, objective side, subject and subjective side, as well as in the modes of commission.

Thus, the Moldovan legislator in the very text of Art. 220[1] CC RM, excluded any type of confusion or overlap of criminal norms in the process of legal qualification, clearly delimiting this rule from the offense of trafficking in human beings (Art. 165 CC RM), or from the offense of participation of a child in pornographic performances (Art. 208[4] CC RM), a recently introduced offense in criminal law by Law No.5 of 12 February 2026, within a legislative effort dedicated to the prevention and countering of the sexual exploitation and abuse of minors. While in the case of trafficking in human beings we already have a consolidated doctrine and judicial practice, then in the case of the offense provided for by Art. 208[4] CC RM we are placed within a new and unexplored legal framework.

In the present study we will refer, distinctly, to the offense of participation of a child in pornographic performances, an aspect that gives this scientific undertaking additional topicality. In any case, the present research has as its central point the examination of the norm provided for by Art. 220[1] CC RM, especially in terms of its delimitation from other offenses, given that the legal text of the said norm expressly establishes the limits of the extension of the norm.

Methods and materials applied. The scientific undertaking within this research is grounded, first and foremost, on comparative analysis of the delimitation of the offense of inducement, determination or facilitation of online sexual services from other criminal acts. At the same time, was used the method of documentary and systemic analysis of relevant legal acts, being examined primarily the provisions of the Criminal Code and the information note to the draft law on the amendment of certain normative acts (prevention and countering of sexual exploitation and sexual abuse committed against children), in correlation with the international instruments relevant to the scientific undertaking. Thus, the Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA has been relied upon, as well as a series of international instruments, such as:

– Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by General Assembly resolution 317 (IV) of 2 December 1949;

– Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly by Resolution A/RES/55/25 of 15 November 2000;

– Council of Europe Convention on Action against Trafficking in Human Beings of

16 May 2005;

– Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the United Nations General Assembly by Resolution A/RES/54/263 of 25 May 2000;

– Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Lanzarote, 25 October 2007;

– Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989.

Discussion and results obtained. In the following, we will proceed to examine the main benchmarks for delimiting the offense of inducement, determination or facilitation the provision of online sexual services by reference to each of the aforementioned offenses, distinctly and in logical succession, for a clear and coherent understanding of the differentiation criteria.

In the architecture of modern criminal law, trafficking in human beings is not merely an offense, but an absolute denial of human freedom and dignity, an offense firmly condemned by a series of international instruments, in particular: *the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly by Resolution 317 (IV) of 2 December 1949*, a document that established an imperative standard for the protection of human dignity, imposing on states the obligation to sanction any form of exploitation, regardless of any manifestation of the victim's consent [2]; *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly by Resolution A/RES/55/25 of 15 November 2000*, an act which innovatively enshrined in its text the expression "trafficking in persons", indicating recruitment, transportation, transfer, sheltering or fostering of a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation [3]; *the Council of Europe Convention on Action against Trafficking in Human Beings, concluded on 16 May 2005*, a document that brought about a shift in conceptions in the field of trafficking in human beings, by moving from the strict need to hold persons criminally liable to a model centered on trafficking prevention and the protection of fundamental rights, establishing rigorous obligations for states in identifying and assisting victims of trafficking in human beings [4].

In the criminal law of the Republic of Moldova, the offense of trafficking in human beings is regulated by Art. 165 CC RM an offense that has a complex character and provides several alternative normative modes of realization of the objective side.

Thus, the objective side of the offense provided for by Art. 165 CC RM is expressed in the prejudicial act that includes two actions (inactions) of an alternative character, namely: the main action and the adjacent action or inaction. The main action has the following alternative normative modalities: recruitment, transportation, transfer, sheltering, fostering.

The main action, under any of the modalities set out above, must be accompanied by the adjacent action or inaction, in any of its forms, which are specified in the above-mentioned article, for example: a) use of violence not dangerous to person's life and health or threat of using violence; b) kidnapping; c) seizure, concealment, damage or destruction of documents; d) holding in servitude in order to return a debt; e) threat of disclosing con-

fidential information to the victim's family or to other natural or legal persons; f) fraud; g) abuse of vulnerability or abuse of power, giving or receiving of payments or benefits in order to achieve the consent of a person having control over another person [5]. All these modalities are directed against an adult person, with or without consent thereof, for the purpose of commercial or noncommercial sexual exploitation, by forced labor or services, for beggary [...].

From examining the structure of the objective side of the offense of trafficking in human beings, we identify the central element without which it would not be possible to qualify the act as an offense, namely: that the acts set out in the disposition of Art. 165 CC RM be directed at a victim (an adult person) "with or without that person's consent", which represents the central element in delimiting the offense provided for by Art. 220^1 CC RM from the offense of trafficking in human beings – the victim's consent.

Therefore, in the case of the offense of inducement, determination or facilitation the provision of online sexual services, the victim freely consents to the provision of such services, whereas in the case of the offense of trafficking in human beings, even if, at first sight, the victim expresses consent to carry out certain activities, in reality the consent is vitiated. In such a case, the victim's consent is irrelevant, because it is affected by coercion or by other non-aggressive recruitment methods, taking one of the forms provided for in para. (1) lets. a)-g) and para. (2) lets. f), g) of Art. 165 CC RM.

In the following, while maintaining the rigor of the reasoning, we shall resort to the jurisprudential guidelines provided by the Supreme Court of Justice (hereinafter SCJ), which are intended to ensure a uniform and correct application of the law. Although there are currently no express guidelines from the SCJ concerning the offense of inducement, determination or facilitation of online sexual services, the Court has ruled on the offense of pimping (Art. 220 CC RM), the benchmarks of which may be relied upon in the present doctrinal analysis, given that the offense of pimping is a related and connected legal institution.

Thus, according to Plenary Decision No.37 of the Supreme Court of Justice of the Republic of Moldova "regarding the practice of applying legislation in cases concerning trafficking in human beings and trafficking in children" of 22 November 2004, as subsequently amended, the Court established that: in the process of delimiting the offense of trafficking in human beings from the offense of pimping, the following aspects should be taken into account:

– First, the difference results from the generic legal object of the two incriminations, that is, the social values protected. Thus, in the case of the offense of trafficking in human beings, protection concerns the freedom of will and action of the person, whereas in the case of the offense of pimping, the emphasis is placed on the protection of social relations concerning social coexistence, grounded in the protection of public morals, as well as ensuring the lawful means of subsistence.

– Second, another important criterion in delimitation is the manner of commission of the act; trafficking in human beings necessarily involves the use of coercive means or methods assimilated to them. Where a person, without resorting to coercive means, induces or facilitates prostitution, or gaining benefits from practicing prostitution by another person, that person commits the offense of pimping, provided for by Art. 220 CC RM [6, p. 11].

At the same time, the Court emphasized that the offense of pimping is an autonomous offense, yet in certain situations it may fall within the sphere of applicability of the offense of trafficking in human beings, or they may even coexist. Thus, where initial acts

of pimping are followed by the application of coercive means against the same person, will be retained a real concurrence of offenses between pimping and trafficking in human beings. The findings of the Supreme Court of Justice are of particular relevance because they supplement what we stated at the beginning of the examination of this aspect, namely that the principal element in delimiting trafficking in human beings from pimping / inducement, determination or facilitation the provision of online sexual services must, *in concreto*, be assessed in terms of the role of the victim's consent.

Another element of delimitation between the offense of inducement, determination or facilitation the provision of online sexual services and the offense of trafficking in human beings lies in the configuration of the subjective side of the offense, more precisely in the purpose of the offense (the purpose of committing the offense).

Thus, in the case of the offense provided for by Art. 220[1] CC RM, the purpose is a special one and consists in obtaining, directly or indirectly, income from the victim's provision of online sexual services, whereas in the case of the offense of trafficking in human beings, the purpose is much broader and more complex.

In this regard, within the configuration of the subjective side of the offense provided for by Art. 165 CC RM, there is present the purpose of the main action, which concerns the purpose of commercial or non-commercial sexual exploitation, exploitation through forced labor or services, begging, etc., as well as the purpose of the adjacent action, which is expressed in: the purpose of repaying a debt, the purpose of obtaining the consent of a person who has control over another person; the purpose of ensuring the victim's subordination.

After analyzing the main elements of delimitation between the offense of inducement, determination or facilitation the provision of online sexual services and trafficking in human beings, we shall next examine the offense of participation of a child in pornographic performances, with a view to delimiting it from the offense provided for by Art. 220[1] CC RM.

Offenses directed against children, especially their involvement in activities of a sexual nature, have consistently represented a major concern both nationally and internationally. This need for protection has generated a complex legal framework, made up of a series of international and national normative acts that guarantee the rights and safety of the child, such as:

– *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, adopted by the United Nations General Assembly by Resolution A/RES/54/263 of 25 May 2000, an international act that represents an essential legal instrument for the protection of minors. Its major importance lies in defining the notions of: a) sale of children; b) child prostitution; c) child pornography. The need for this act was dictated by the obligation of the signatory states to prevent and criminalize exploitative activities that harm human dignity [7];

– *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. Lanzarote, 25 October 2007. This convention is the international model for the improvement of the domestic legislation of the Republic of Moldova, and represents one of the first and most important international treaties establishing the various forms of sexual exploitation and abuse of children [...] [8];

– *Convention on the Rights of the Child*, adopted by the United Nations General Assembly on 20 November 1989, which is the most important international act recognizing the child as a subject of rights, not merely as an object of protection [9].

As noted above, the offense of participation of a child in pornographic performances

represents a recent incrimination introduced into the criminal legislation of the Republic of Moldova, an offense included by Law No.5 of 12 February 2026, in the context of strengthening mechanisms for the prevention and countering of sexual abuse and exploitation of minors.

A *fortiori*, in order to understand the need for legislative intervention, it is necessary to analyze the information note to the draft law on the amendment of certain normative acts (prevention and countering of sexual exploitation and sexual abuse committed against children). Thus, the supplementation of the legal framework with new provisions was grounded in the objectives of ensuring the harmonization of criminal legislation with international standards concerning the countering of sexual abuse and online sexual exploitation of children.

In concreto, according to the information note, the legislative amendments have as their final objective the implementation of action No.212 from the Government Action Plan for 2024, approved by Government Decision No.887/2023, as well as action No.35 within Chapter 23 "Judicial system and fundamental rights" of the National Action Plan for the accession of the Republic of Moldova to the European Union for the years 2024-2027, aiming at the transposition of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and replacing Council Framework Decision 2004/68/JHA [11].

Although the information note should contain all the most relevant aspects regarding the need to supplement the Criminal Code and describe in detail the constitutive elements of the offense of participation of a child in pornographic performances, in fact this information note only highlights, at a general level, the need to implement the Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and replacing Council Framework Decision 2004/68/JHA [10]. However, the act *inter alia* indicates that the criminalization in a single article of all acts referring to pornographic performances involving a child will position this norm as a special one in relation to the other offenses against minors, thus facilitating the work of practitioners in the qualification of such acts [11].

Under these circumstances, in order to carry out a comprehensive analysis and ensure compliance with the scientific approach of the present work, we shall next examine the incriminating norm provided for by Art. 208^4 CC RM, and then, through logical interpretation, the main criteria for delimitation from the offence provided for by Art. 220^1 CC RM will be elucidated.

Thus, Art. 208^4 para. (1) CC RM provides for several normative modalities of realizing the objective side. In turn, the objective side of the offense provided for by Art. 208^4 CC RM is expressed in the prejudicial act characterized by the action of: instigating a child to participate in pornographic performances; recruiting a child to participate in pornographic performances; exploiting a child for this purpose in any other way; as well as deriving benefits from such acts. The objective side of the offense provided for by Art. 208^4 para. (2) CC RM consists in the prejudicial act expressed through the action of coercing a child to participate in pornographic performances.

As follows from the provisions of Art. 132^5 CC RM, a pornographic performance means the live exhibition, addressed to a specific audience, including through information and electronic communication technologies, of a child engaged in explicit sexual conduct, whether real or simulated, or of a child's sexual organs, primarily for sexual purposes [5].

According to Art. 220^1 para. (1) CC RM, the inducement, determination or facilitation

the provision by another person of online sexual services consists in the presentation of the person engaged in explicit sexual activities or in the display of sexual organs, transmitted as video images via information technologies or electronic communications.

Thus, we establish that in the case of the offense provided for by Art. 220[4] CC RM, in addition to the text of the legal provision itself, the General Part of the CC RM also includes the notion of pornographic performance, which is intended to serve as an essential benchmark in the qualification of the act, a feature that is absent in the case of the offence provided for by Art. 220[1] CC RM.

The acts provided for in paras. (1) and (2) of Art. 280[4] CC RM are directed against the victim who has the status of "child". The interpretation of this status must be carried out in accordance with international legal instruments. Thus, according to Art. 2 letr. (a) of Directive 2011/93/EU, the notion of "child" means any person below the age of 18 years [10]. In the same sense, Art. 1 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, establishes that a "child" means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier [9]. Under these conditions, it follows that the victim of the offense provided for by Art. 208[4] CC RM is the natural person who, at the time of instigation or recruitment [...] has not yet attained the age of 18. At the same time, the legislator provided for in letr. a) para. (3) Art. 208[4] CC RM the aggravated form, in the situation where the actions provided for in para. (1) or (2) are committed against a person who has not reached the age of 14 years.

Moreover, from the standpoint of the victim's consent, in the case of the offense provided for by art. 208[4] CC RM, it does not have legal relevance, given that the victim has the status of "child". Thus, even in the event of the victim's consent to be involved in such activities, it cannot produce legal effects in terms of the qualification of the act, being devoid of validity, viewed from the perspective of the need to ensure enhanced protection of minors.

Conclusions. In the process of legal qualification of the act, it is essential to elucidate the totality of objective and subjective signs that determine the classification of a prejudicial act as a particular offense provided for in the Special Part of the CC RM. From this perspective, the offense of inducement, determination or facilitation the provision of online sexual services, at the time of its introduction into criminal law as a result of the adoption and entry into force of Law No.316 of 17 November 2022, represented a legislative novelty that generated the need to clearly outline the scope of its application.

In this context, the delimitation of this offense from other criminal acts is essential. As regards delimitation from the offense of trafficking in human beings, we establish essential differences from the standpoint of the validity of the victim's consent, as well as the pursued purpose.

Thus, in the case of the offense of trafficking in human beings, the purpose is a complex one, materialized in commercial or non-commercial sexual exploitation, exploitation through forced labor or services, begging [...]. Whereas in the case of the offense provided for by Art. 220[1] CC RM, a decisive role in qualification is played by establishing the victim's consent, or, if it is absent or has been found to be vitiated by certain circumstances, we are within the sphere of trafficking in human beings.

With regard to the delimitation of the offense of inducement, determination or facilitation the provision of online sexual services from the offense provided for by Art. 208[4] CC RM – participation of a child in pornographic performances – essential delimitations were established, especially from the standpoint of the status of the victim of the offense:

if in the hypothesis of the offense provided for by Art. 220[1] CC RM the victim is an adult person who freely consents to the provision of services and the consent is valid, then in the case of the offense provided for by Art. 208[4] CC RM, the victim is a "child", whose consent is devoid of legal relevance.

Bibliographical references

1. Information note to the draft law for the amendment of certain normative acts (ensuring the rights of victims in cases of offenses concerning sexual life and domestic violence). Available:https://justice.gov.md/sites/default/files/document/attachments/nota_informativa_4.pdf.
2. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly by Resolution 317 (IV) of 2 December 1949. Available: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/trafficpersons.pdf.
3. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted by the United Nations General Assembly by Resolution A/RES/55/25 of 15 November 2000. Available: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ProtocolonTrafficking.pdf.
4. Council of Europe. Convention on Action against Trafficking in Human Beings of 16 May 2005. Available: https://rm.coe.int/168008371d.
5. Criminal Code of the Republic of Moldova No.985-XV of 18.04.2002, in force since 12.06.2003. In: Official Gazette of the Republic of Moldova, 13.09.2002, No.128-129/1012.
6. Plenary Decision of the Supreme Court of Justice No.37 of 22.11.2004 regarding the practice of applying legislation in cases concerning trafficking in human beings and trafficking in children. Available: https://jurisprudenta.csj.md/search_hot_expl.php?id=230.
7. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Adopted by the United Nations General Assembly by Resolution A/RES/54/263 of 25 May 2000. Available: https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc-sale.pdf.
8. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Lanzarote, 25 October 2007. Available: https://rm.coe.int/1680084822.
9. Convention on the Rights of the Child. Adopted by the United Nations General Assembly on 20 November 1989. Available: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.
10. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography. Replacing Council Framework Decision 2004/68/JHA. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A02011L0093-20111217.
11. Information Note to the Draft Law for the Amendment of Certain Normative Acts (prevention and countering of sexual exploitation and sexual abuse committed against children). Available: https://old.gov.md/sites/default/files/document/attachments/nu-869-mj-2024.pdf.

CZU 341.231.14 **DOI: https://doi.org/10.5281/zenodo.20812857**

DEROGATION FROM OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS DURING MARTIAL LAW: LIMITS OF PERMISSIBILITY AND STATE PRACTISE

Uliana KUZENKO,
PhD Candidate, Associate Professor
Department of Law,
Academician I.M. Lutskyi, King Danylo University,
Ivano-Frankivsk, Ukraine
ORCID: 0000-0002-3978-5007

Abstract

The article provides a comprehensive analysis of the institution of derogation from international legal obligations under the European Convention on Human Rights in the context of martial law as a specific legal mechanism for limiting human rights and freedoms. The content and legal nature of derogation in accordance with Article 15 of the Convention are revealed, its place within the system of international human rights protection is determined, as well as its correlation with the general principles of international law.

The conditions for the lawful application of derogation are analyzed, in particular the existence of a public emergency threatening the life of the nation, as well as the criteria of necessity, proportionality, and compliance of the measures with other international obligations of the state. Special attention is paid to the determination of the list of rights that are non-derogable even during martial law, as well as to the guarantees of their protection.

The article examines the practice of states in applying derogation and analyzes the approaches of the European Court of Human Rights to assessing the legality of such measures, in particular through the prism of the "margin of appreciation" doctrine. Trends in the development of international practice are identified, and the main risks of abuse of the derogation mechanism are outlined. The necessity of maintaining a balance between national security interests and the protection of fundamental human rights is substantiated, as well as the importance of strengthening international control over the application of derogation measures in the context of contemporary global challenges.

Keywords: derogation, human rights, European Convention on Human Rights (ECHR), martial law, proportionality, margin of appreciation.

DEROGAREA DE LA OBLIGAȚIILE PREVĂZUTE DE CONVENȚIA EUROPEANĂ A DREPTURILOR OMULUI ÎN TIMPUL LEGII MARȚIALE: LIMITELE ADMISIBILITĂȚII ȘI PRACTICA STATELOR

Abstract

Articolul oferă o analiză amplă a instituției derogării de la obligațiile juridice internaționale prevăzute de Convenția Europeană a Drepturilor Omului, în contextul legii marțiale, ca mecanism juridic specific de limitare a drepturilor și libertăților fundamentale ale omului. Sunt evidențiate conținutul și natura juridică a derogării în conformitate cu Articolul 15 al Convenției, fiind determinat locul acesteia în sistemul internațional de protecție a drepturilor omului, precum și raportul său cu principiile generale ale dreptului internațional.

Sunt analizate condițiile aplicării legale a derogării, în special existența unei situații excepționale care amenință viața națiunii, precum și criteriile necesității, proporționalității și compatibilității măsurilor adoptate cu celelalte obligații internaționale ale statului. O atenție deosebită este acordată identificării drepturilor care nu pot face obiectul derogării nici în perioada legii marțiale, precum și garanțiilor de protecție a acestora.

Articolul examinează practica statelor în aplicarea derogării și analizează abordările adoptate de Curtea

Europeană a Drepturilor Omului în evaluarea legalității unor asemenea măsuri, în special prin prisma doctrinei marjei de apreciere. Sunt identificate tendințele de dezvoltare a practicii internaționale și sunt evidențiate principalele riscuri de abuz ale mecanismului derogării. Totodată, este argumentată necesitatea menținerii unui echilibru între interesele de securitate națională și protecția drepturilor fundamentale ale omului, precum și importanța consolidării controlului internațional asupra aplicării măsurilor derogatorii în contextul provocărilor globale contemporane.

Cuvinte-cheie: derogare, drepturile omului, Convenția Europeană a Drepturilor Omului (CEDO), lege marțială, proporționalitate, marjă de apreciere.

Introduction. In the context of armed conflicts, military aggression, and other emergency situations, states are objectively faced with the necessity of applying special legal mechanisms aimed at ensuring national security and maintaining public order. One of such mechanisms is derogation from international legal obligations in the field of human rights, as provided for in Article 15 of the European Convention on Human Rights, which allows states to temporarily depart from certain obligations in the event of a public emergency threatening the life of the nation [1].

At the same time, the application of derogation is accompanied by a number of complex theoretical and practical issues. First and foremost, this concerns the determination of the criteria of a "public emergency" that justifies the need for derogation, as well as the establishment of the limits of permissible restrictions on human rights and freedoms. Of particular relevance is the issue of compliance with the principles of necessity, proportionality, and non-discrimination in the implementation of derogation measures.

An additional level of complexity arises from the need to ensure a balance between the interests of state security and the obligation to guarantee fundamental human rights, particularly those that are non-derogable even in situations of emergency or martial law. In this context, the case law of the European Court of Human Rights plays a special role, as it develops the criteria for assessing the legality of derogation and defines the scope of state discretion.

The relevance of this study is also contemporary challenges related to armed conflicts, particularly in Ukraine, which highlights the issue of the legality and effectiveness of the application of the derogation mechanism. This, in turn, requires a comprehensive scholarly analysis of both the theoretical foundations of the institution of derogation and the practice of its application in both international and national legal systems.

Article 15 of the European Convention on Human Rights provides for the possibility of a temporary derogation by states from their international legal obligations in the event of war or another public emergency threatening the life of the nation. Such a mechanism is an exceptional legal instrument aimed at ensuring an effective response of the state to crisis circumstances that threaten its existence or the functioning of democratic institutions [2].

By its legal nature, derogation does not mean a complete release of the state from its international obligations, but only allows their temporary limitation within strictly defined limits. It represents a special legal regime that differs from ordinary restrictions on human rights, as it is applied exclusively in situations of emergency and in the presence of objective necessity.

The application of derogation is subject to a number of clearly defined conditions, which are formulated both in the Convention itself and in the practice of the European Court of Human Rights. These include:

- The existence of a public emergency that genuinely threatens the life of the nation;
- The necessity of the measures taken, which must be justified and proven;

- The proportionality of restrictions, meaning a balance between the measures applied and the intended aim;

- Compliance of derogation measures with other international legal obligations of the state [3].

An important element of the legal regime of derogation is also its procedural aspect, in particular the obligation of a state to notify the Secretary General of the Council of Europe about the introduction of derogation, its grounds, and the scope of the measures applied. This ensures international oversight of compliance with the requirements of the Convention and prevents potential abuses.

Particular importance is attached to the provision concerning so-called "non-derogable rights", which cannot be restricted even during a state of war or emergency. These include, in particular, the right to life (except in cases of lawful acts of war), the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and forced labour, as well as the principle of nullum crimen sine lege (no punishment without law). These rights are absolute in nature and form the foundation of the international legal order.

Thus, derogation is a complex legal institution that combines elements of flexibility and limitation, allowing the state to adapt its legal regime to emergency conditions while preserving fundamental human rights guarantees. Its application requires strict compliance with established international legal standards and is subject to the supervision of international institutions, primarily the European Court of Human Rights.

The European Court of Human Rights, in its case law, has developed a set of criteria used to assess the legality and justification of derogation from obligations under the European Convention on Human Rights. These criteria are of fundamental importance for determining the limits of permissible restrictions on human rights in situations of emergency or martial law [3].

The primary requirement is the establishment of the existence of a "public emergency threatening the life of the nation". The European Court of Human Rights interprets this concept as an exceptional crisis situation affecting the whole population or a significant part of it and posing a real threat to the functioning of state authorities. At the same time, the state must demonstrate the existence of such a threat by providing sufficient justification, rather than merely making a formal reference to emergency circumstances.

The second important criterion is the principle of necessity, according to which the measures taken by the state must be objectively justified by the specific situation. The European Court of Human Rights examines whether the state genuinely lacked alternative, less restrictive means of achieving the intended aim [3]. Thus, derogation cannot be used as a universal instrument, but only as a measure of last resort in response to exceptional circumstances.

The third key element is the principle of proportionality, which requires a reasonable balance between the restriction of human rights and the legitimate aim pursued by the state. The Court assesses whether the measures applied exceed what is strictly necessary and whether they result in excessive interference with individual rights and freedoms. It is also important that proportionality be maintained both in terms of the substance of the restrictions and their duration.

In addition to the aforementioned criteria, the European Court of Human Rights applies the doctrine of the "margin of appreciation", which grants states a certain degree of discretion in choosing measures to respond to emergency situations. At the same time, such discretion is not unlimited, as the Court exercises supervision to ensure that states

do not exceed the permissible limits of interference with human rights. In particular, it is assessed whether derogation measures comply with the principles of the rule of law, non-discrimination, and due process.

Thus, the limits of permissible derogation are determined through a combination of substantive and procedural criteria developed in the case law of the European Court of Human Rights. Compliance with these criteria is a necessary condition for maintaining a balance between the interests of state security and the protection of human rights guarantees, even in periods of emergency.

The case law of the European Court of Human Rights plays a crucial role in defining the content and limits of the application of derogation under Article 15 of the European Convention on Human Rights, shaping established approaches to assessing its legality, necessity, and proportionality. One of the earliest and most fundamental cases in this field is *Lawless v. Ireland* (1961), in which the Court recognized that the activities of the Irish Republican Army constituted a real threat to national security, thereby meeting the criterion of a "public emergency threatening the life of the nation". In this context, detention without trial was considered permissible; however, the Court emphasized the exceptional nature of derogation and the necessity of its proper justification [4].

The further development of approaches to assessing derogation can be observed in *A. and Others v. the United Kingdom* (2009), where the European Court of Human Rights found that although the threat of terrorism could justify the application of derogation, the specific measures adopted by the state were disproportionate and discriminatory [5]. In particular, detention without judicial control was applied exclusively to foreign nationals, which violated the principles of equality and non-discrimination. This judgment underscored that even in situations of emergency, the state must not exceed the limits imposed by the principle of proportionality.

In cases against Turkey, in particular *Aksoy v. Turkey* (1996), the Court formulated an important position regarding the absolute nature of certain rights, emphasizing that the prohibition of torture cannot be restricted under any circumstances, even during a state of emergency. These judgments also highlight the necessity of ensuring effective safeguards against abuse, including judicial oversight and access to legal assistance [6].

The contemporary stage in the development of derogation practice is associated with the application of this mechanism in the context of armed conflicts, particularly in Ukraine. Ukraine first exercised its right of derogation in 2015 in response to armed aggression, notifying a derogation from certain provisions of the Convention. Following the full-scale invasion in 2022, the state again applied derogation, which has necessitated an assessment of the compliance of such measures with the criteria established in the case law of the European Court of Human Rights. In this context, the Court, in inter-state cases, in particular Ukraine v. Russia, pays attention not only to the fact of derogation but also to whether the state complies with the principles of proportionality, necessity, and respect for non-derogable human rights.

In general, the case law of the European Court of Human Rights demonstrates that derogation is recognized as a permissible but exceptional instrument for responding to emergency situations. The Court acknowledges that states are granted a certain margin of appreciation; however, it exercises supervision to ensure that such discretion does not lead to arbitrary or disproportionate restrictions of human rights. Thus, even under conditions of martial law, the state is obliged to act within the framework of international legal standards, ensuring a balance between national security interests and the protection of fundamental rights and freedoms.

The practice of applying derogation from international legal obligations under the European Convention on Human Rights indicates its widespread use by states as a tool for responding to emergency situations that threaten national security or public order. Most often, derogation is applied in the context of counter-terrorism measures, global crises, including the COVID-19 pandemic, as well as during armed conflicts [8].

For instance, the United Kingdom has used the mechanism of derogation in response to terrorist threats, introducing measures such as prolonged detention without judicial control. Such practices have been subject to scrutiny by the European Court of Human Rights, which has emphasized the necessity of adhering to the principles of proportionality and non-discrimination [5].

France applied derogation following the terrorist attacks of 2015, introducing a state of emergency that entailed the expansion of law enforcement powers and the restriction of a number of rights and freedoms [2]. This led to debates regarding the limits of permissible state interference in the sphere of human rights.

Turkey has extensively utilized the mechanism of derogation, particularly in the aftermath of the attempted coup d'état in 2016, which was accompanied by substantial restrictions on rights and freedoms, including prolonged detentions and limitations on freedom of expression. The case law of the European Court of Human Rights concerning Turkey underscores the imperative of strict oversight to ensure compliance with fundamental human rights standards [6].

During the COVID-19 pandemic, a number of states, including Latvia, Romania, Armenia, and Moldova, notified derogations in connection with the introduction of restrictions on freedom of movement and assembly. These measures were justified by the need to protect public health; however, their implementation required compliance with the principles of temporariness, necessity, and proportionality [3].

The practice of Poland demonstrates a different approach: although the state introduced significant restrictions on rights during the pandemic, it did not carry out a formal derogation in accordance with Article 15 of the Convention. This has sparked academic debate regarding the legality of imposing restrictions without official notification of derogation and raised questions about the necessity of strict compliance with the procedural requirements of the Convention [3].

Georgia applied derogation in response to threats to national security, particularly in the context of armed conflict and internal crisis situations [8]. In doing so, the state justified the necessity of such measures by the need to protect territorial integrity and stability, which corresponds to the general approaches established in international practice.

Spain, in turn, has repeatedly faced challenges related to terrorist activity and political crises, particularly in the context of events in Catalonia. Although the state has not always applied formal derogation, it has used domestic mechanisms for restricting rights, which has also become a subject of discussion regarding the correlation between national measures and international human rights standards [2].

Particular importance is attached to the practice of applying derogation in situations of armed conflict, especially in Ukraine, which first exercised the right to derogate from certain provisions of the Convention in 2015, and after the full-scale invasion in 2022 expanded the scope of derogation measures [7]. This confirms the relevance of the institution of derogation in contemporary conditions and, at the same time, underscores the necessity of strict compliance with international standards.

Overall, state practice demonstrates the universality of derogation as a legal instrument for responding to emergency situations. At the same time, it reveals the existence of risks associated with the potential abuse of this mechanism, particularly in cases where

restrictions on human rights exceed what is necessary or is applied without proper justification. In this context, the role of the European Court of Human Rights is of decisive importance, as it ensures the maintenance of a balance between the interests of state security and the protection of human rights [3].

Conclusions. Derogation is an important instrument of international law that enables states to respond effectively to emergency situations, including armed conflicts and other threats to national security. At the same time, this mechanism has an exceptional character and may be applied only within strictly defined limits established by the European Convention on Human Rights and further elaborated in the case law of the European Court of Human Rights.

The main criteria for the admissibility of derogation include the existence of a real and substantiated threat to the life of the nation, the objective necessity of the measures applied, their proportionality to the legitimate aim pursued, as well as the unconditional respect for non-derogable human rights, which cannot be restricted under any circumstances. Particular importance is also attached to compliance with procedural requirements, including the obligation of states to properly notify international institutions of derogation measures.

The practice of the European Court of Human Rights clearly demonstrates that even in situations of emergency or martial law, states are not released from their international legal obligations. While recognizing a certain margin of appreciation for states, the Court exercises control over compliance with the principles of the rule of law, non-discrimination, necessity, and proportionality, thereby preventing arbitrary restrictions of human rights.

In the context of the growing number of global challenges, including armed conflicts and security crises, the institution of derogation is gaining particular relevance. This necessitates further improvement of its application mechanisms, strengthening of international oversight, and the development of unified approaches to determining the limits of permissible restrictions on human rights, which will contribute to preventing abuses and ensuring a proper balance between state interests and the protection of human rights.

Bibliographical references

1. European Convention on Human Rights. 1950. Available: https://www.echr.coe.int/documents/d/echr/convention_en (accessed 10.04.2026).
2. Harris D., O'Boyle M., Bates E., Buckley C. Law of the European Convention on Human Rights. Oxford: Oxford University Press, 2018.
3. European Court of Human Rights. Guide on Article 15 of the European Convention on Human Rights. Available: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_15_eng (accessed 10.04.2026).
4. Lawless v. Ireland (No.3): Judgment of the European Court of Human Rights of 1 July 1961. Available: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57518%22]}.
5. A. and Others v. the United Kingdom: Judgment of the European Court of Human Rights of 19 February 2009. Available: https://www.refworld.org/jurisprudence/caselaw/echr/2009/65891.
6. Aksoy v. Turkey: Judgment of the European Court of Human Rights of 18 December 1996. Available: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-9054%22]}.
7. Ukraine v. Russia (inter-state cases): European Court of Human Rights. Available: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-14347%22]}.
8. Gross O., Ní Aoláin F. Law in Times of Crisis: Emergency Powers in Theory and Practice. Cambridge: Cambridge University Press, 2006. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=975291.

CZU 343.21 **DOI: https://doi.org/10.5281/zenodo.20813079**

THE QUALITY REQUIREMENTS OF THE CRIMINAL LAW AS AN EXPRESSION OF THE PRINCIPLE OF LEGALITY

Radion COJOCARU,
PhD, University Professor,
Director, Doctoral School "Criminal Sciences and Public Law",
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3809-7392

Ana-Maria GHERMAN-GRIMAILO,
PhD Candidate, University Assistant,
Department Private Law,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0001-6348-8803

Abstract

Within the legal framework of the rule of law, the principle of legality in criminal law serves as a fundamental safeguard, as it makes the legitimacy of criminal intervention contingent upon the existence of a pre-established, clear, and predictable legal provision, thereby ensuring the effective protection of the individual against arbitrary punishment. This principle is not limited to the mere formal existence of a written criminal law, but necessarily presupposes compliance with certain quality standards of the law, without which its correct application becomes, without a doubt, impossible. In this sense, the quality of criminal law provisions constitutes „a sine qua non" condition for the effective realization of the legality of criminalization and for guaranteeing legal certainty for those subject to the law.

In this study, we aim to examine, from both a doctrinal and jurisprudential perspective, the quality standards of criminal law provisions through the lens of the principle of legality of criminalization, with an emphasis on their importance in the process of the legal-criminal classification of acts.

This approach aims to highlight the risks posed by unclear criminal law provisions, as well as to emphasize the obligation to interpret the law strictly and restrictively, as a fundamental guarantee of respect for criminal legality in a state governed by the rule of law.

Keywords: criminal legality, quality standards of norms, accessibility, clarity, predictability, strictness of the law.

EXIGENȚELE DE CALITATE ALE NORMEI DE INCRIMINARE CA EXPRESIE A PRINCIPIULUI LEGALITĂȚII PENALE

Abstract

În arhitectura normativă a statului de drept, principiul legalității incriminării dobândește valoarea unei garanții fundamentale, întrucât condiționează legitimarea intervenției penale de existența unei norme prestabilite, clare și previzibile, asigurând astfel protecția efectivă a individului împotriva arbitrariului sancționator. Acest principiu nu se reduce doar la simpla existență formală a unei norme penale scrise, ci presupune, în mod necesar, respectarea unor standarde de calitate ale legii, fără de care aplicarea sa corectă devine fără dar și poate imposibilă. În acest sens, calitatea normelor penale constituie o condiție "sine qua non" pentru realizarea efectivă a legalității incriminării și pentru garantarea securității juridice a destinatarilor legii.

Ne propunem în prezentul studiu examinarea, din perspectivă doctrinară cât și jurisprudențială, a

standardelor de calitate ale normelor penale prin prisma principiului legalității incriminării, cu accent pe importanța acestora în procesul de calificare juridico-penală a faptelor.

Demersul urmărește evidențierea riscurilor pe care le generează normele penale lipsite de claritate, precum și reliefarea obligației de interpretare strictă și restrictivă a legii, ca garanție fundamentală a respectării legalității penale într-un stat de drept.

Cuvinte-cheie: legalitate penală, standarde de calitate ale normei, accesibilitatea, claritatea, previzibilitatea, strictețea legii.

Introduction. The concept of legal certainty in criminal law was developed by the distinguished Italian criminologist and criminal law scholar Cesare Beccaria in his seminal work „Dei delitti e delle pene". In the author's view: „If the interpretation of laws constitutes an evil, it is evident that another evil is their obscurity, which necessarily entails interpretation; and this evil will be all the greater if the laws are written in a language foreign to the people, thus placing them at the mercy of a few individuals, since they cannot judge for themselves what will be the fate of their freedom or that of their fellow citizens, in a language that transforms a solemn and public document into one that is almost private and domestic. What are we to think of people, considering that this was the long-standing custom of a large part of cultured and enlightened Europe? The greater the number of those who will understand and hold in their hands the sacred code of laws, the rarer crimes will become, for there is no doubt that ignorance and uncertainty regarding punishments increase the power of passions" [1, p.19].

In this context, the renowned criminal law scholar F. Carrara states: „No one can be attributed with the intent to violate a law that either does not exist or is unknown to them. Therefore, an act cannot constitute a crime if the law prohibiting it has not been enacted and promulgated" [3, p. 36].

The principle of legality of criminalization is enshrined in the first part of Article 22 of the Constitution of the Republic of Moldova: „No one shall be convicted for acts or omissions that, at the time of their commission, did not constitute a criminal offense. "The Criminal Code enshrines the principle of legality in Article 3 para. (1): "No one may be found guilty of committing a crime or subjected to criminal punishment except on the basis of a court decision and in strict accordance with criminal law".

In fact, the accessibility, clarity, and predictability of criminal law provisions are not merely requirements of legislative technique, but genuine safeguards of individual liberty, since only a comprehensible and predictable law enables individuals to adjust their conduct and anticipate the criminal legal consequences of their actions. In the absence of sufficiently precise, unambiguous rules, the application of criminal law risks becoming arbitrary, affecting both the fairness of the legal classification of the act and the legitimacy of the state's punitive response [17, p.141].

Legal classification is inextricably linked to the nature of the criminal law provisions that describe the constituent elements and characteristics of the offense. The precise subsumption of the harmful act under the provisions of criminal law within the legal classification, regardless of whether it is official or unofficial, is possible only to the extent that the criminalization provisions are drafted in full accordance with the quality criteria arising from *the principle of legality of criminalization.*

Methods and materials applied. The scientific nature of this paper is characterized by the use of a methodology that combines interdisciplinary approaches and critical analysis, ensuring a rigorous examination of the quality standards of criminal law.

The logical method plays a central role in this research, serving to systematize and

rationalize the analysis of key concepts such as the clarity of criminalization, accessibility, and the predictability of criminal law. Through this method, the interdependencies and causal relationships between the quality standards of criminal law and its enforcement mechanisms have been highlighted, facilitating the formulation of coherent and rigorously argued conclusions regarding the fairness and conceptual consistency of criminal regulations.

The *critical analysis method* was extensively applied to evaluate criminal law provisions, related legislation, and relevant case law. This critical analysis made it possible to identify vulnerabilities, gaps, and inconsistencies in the regulation and application of quality standards for criminal legality, as well as to assess their impact on judicial practice.

The comparative method was employed by examining Moldova's criminal legal framework in light of the standards established in the case law of the European Court of Human Rights, thereby enabling a comparison of national legislative provisions with the treaty requirements derived from the Court's judgments.

Discussions and results obtained. Based on the provisions of the Universal Declaration of Human Rights (hereinafter UDHR)[1], the principle of legality in criminal law is enshrined in Article 7(1), first sentence of the ECHR: "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time it was committed". In interpreting these provisions, the ECtHR, based on the principle of the evolving interpretation of the European Convention, has identified three criteria for the quality of criminal laws: *accessibility*, *clarity*, *and predictability*.

A ruling by the Constitutional Court stated: "To meet the three quality criteria- accessibility, predictability, and clarity – a legal norm must be formulated with sufficient precision to enable a person to determine their conduct and to reasonably foresee, based on the circumstances of the case, the consequences of that conduct. Otherwise, even though the law contains a legal rule that apparently describes the person's conduct in the given situation, the person may claim that they are unaware of their rights and obligations. Under such an interpretation, a rule that does not meet the criteria of clarity is contrary to Article 23 of the Constitution, which establishes the state's obligation to guarantee every person the right to know their rights" [11].

In the same vein, another decision of the Constitutional Court stated: "...any legislative act must comply with constitutional principles and norms, as well as with the requirements of legislative drafting, which are intended to ensure the clarity, foreseeability, predictability, and accessibility of the act. The law must regulate in a unified manner, ensure a logical-legal connection between the provisions it contains, and, in the case of legal institutions with a complex structure, provide for the elements that distinguish their particularities" [12].

The quality standards of the law, as established in the consistent case law of the European Court of Human Rights, constitute fundamental legal requirements of the rule of law, designed to guarantee legal certainty and the effectiveness of the principle of legality by imposing essential requirements.

In this context, ***the accessibility*** of the law refers to the effective public dissemina-

[1] In accordance with Article 11 of the UDHR: „Everyone charged with a criminal offense has the right to be presumed innocent until proven guilty according to law in a public trial in which all the guarantees necessary for his defense have been provided", and pursuant to paragraph (2): „No one shall be held guilty of any criminal offense for any act or omission that did not constitute a criminal offense under international or national law at the time it was committed. Furthermore, no heavier penalty shall be imposed than that which was applicable at the time the criminal offense was committed".

tion of legislative acts. Under the constitutional order, this requirement is fulfilled through the procedure for publishing the law, as regulated by Article 76 of the Constitution; publication in the Official Gazette constitutes the legal means by which the normative act is incorporated into the legal order and becomes enforceable against all legal subjects. Only from this moment on can it be legitimately presumed that the addressees of the norm have a real opportunity to become aware of its content. This allows for the invocation of the general presumption of knowledge of the law and confers upon the norm the character of an accessible law.

With regard to the requirement of accessibility, the Constitutional Court ruled "... that there is no doubt that the contested provisions meet the condition of accessibility. The Criminal Code is published in the Official Gazette, and the general public has access to it. So, the presumption of knowledge of the law applies, which stems from the general legal principle "*Nemo censetur ignorare legem*".

Consequently, the requirement of ***accessibility*** of a criminal law provision is met upon its publication in the Official Gazette, as publication constitutes the formal legal condition by which the provision becomes enforceable against all those to whom it is addressed. In this context, accessibility is presumed, and knowledge of the law is imputed to all legal subjects pursuant to the principle "*Nemo censetur ignorare legem*", such that the lack of effective information cannot be invoked to call into question the validity of the provision in terms of accessibility.

In the case of *Silver v. the United Kingdom*, the ECHR held that "...the law must be made available in an appropriate manner: the citizen must, in the specific circumstances, have sufficient guidance as to the legal rules applicable in a given situation. It is clear that the Prisons Act and the Regulations met this requirement, but the administrative orders and instructions were not published" [13].

It follows from this interpretation that the accessibility of criminal law is not limited to the publication of the Criminal Code, but necessarily entails the accessibility of all normative acts to which criminal law refers and which contribute to defining the legal content of a crime (elements of a crime). This finding is particularly relevant for offenses described by blanket criminal provisions, in which the content of the criminalization is determined by reference to other normative regulations. In these cases, the accessibility of the criminal provision is contingent upon the subject's actual ability to know the body of law that completes the „criminal significance of the offense". Therefore, in the case of these offenses, it must be verified whether the requirement of accessibility is also met by the legal provisions set forth in other normative acts, to which the legislature refers for a complete description of the elements of the offense.

The second criterion is ***the clarity*** of the criminal law provision. Legal scholarship indicates that the quality of criminal law depends on the fulfillment of certain criteria regarding content and form, as outlined in the principles of legislative drafting; adherence to the rules of legislative drafting is the primary condition for ensuring the quality of criminal law [2, p. 155]. In another approach, the quality of the law presupposes that "its text sets forth the rules of law in a logical and coherent sequence, grammatically correct, in accordance with the requirements of the language..., in a clear and precise manner" [18, p.7].

Building on this idea, it is argued that strict adherence to the rules of legislative drafting constitutes an indispensable condition for maintaining the legislation in force in a proper "working order". Underestimating and oversimplifying this technique leads to numerous legislative and law enforcement errors, which result in a misinterpretation of the law and violations of legality [18].

Therefore, ***the clarity*** of a criminal law provision refers to the intrinsic quality of the legislative text and depends on how the provision is formulated. A criminal law provision is clear when:

• The terms used are intelligible, unambiguous, and correctly formulated in terms of the grammar, spelling, and semantics of the Romanian language;

• The wording of the provision allows for an understanding of the constituent elements of the offense, as well as the criminal penalties that may be imposed;

• The text is not contradictory, obscure, or excessively technical without normative explanation;

• There are no contradictions between general criminal provisions and special criminal provisions.

The third criterion of quality for a criminal law provision is ***predictability***. In general, the predictability of a criminal law provision is determined by the clarity of its wording. Legal doctrine clearly states that the quality of the law is an indispensable condition for the predictability and certainty of its application. A person's ability to anticipate the consequences of their conduct is (or, at least, should be) a determining factor in their choice of behavior [6, p. 3].

According to the Venice Commission, predictability does not merely require that the law be, as far as possible, adopted and made public before it enters into force and that its effects are foreseeable; it also implies that the rule must be formulated with sufficient precision and clarity to enable legal subjects to conform their conduct in accordance with its provisions. The necessary degree of predictability, however, depends on the nature of the law. In particular, this requirement is essential in the field of criminal law. The need to adopt precautionary measures before concrete dangers arise has become increasingly important; this development is legitimate, given the proliferation of risks, generated in particular by technological developments. Nevertheless, in areas where a preventive approach to regulation applies, such as risk law, the grounds for state intervention are formulated in considerably broader and more imprecise terms; however, the principle of the rule of law requires that the requirement of predictability not be set aside even in these areas [15].

Although inextricably linked to the quality of criminal laws, predictability refers to the ability of a legal norm to enable its addressee to reasonably anticipate the legal consequences of their conduct, based on the normative content of the law, supplemented, if necessary, by the consistent judicial interpretation of the courts.

A criminal law provision is ***predictable*** when:

• It allows the individual to identify the conduct relevant under criminal law, that is, the unlawful conduct described by the provision. The person can reasonably anticipate whether a certain act or omission entails criminal liability;

• A person can, if necessary, rely on the interpretation of the courts, in order to understand the content of the provision consistent (uniform) case law, and legal counsel. Predictability is not contingent upon absolute certainty in the wording of the criminal law provision, but also upon reasonable foreseeability, which may be ensured through legal guidance (interpretations or explanations). Therefore, predictability may result not only from the text of the criminal law provision, but also from the consistent and accessible case law existing regarding the provision.

With regard to the relationship between the clarity and predictability of criminal law provisions, we conclude that clarity is, first and foremost, an intrinsic requirement of the legislative text. It concerns the manner in which the criminal provision is formulated,

the degree of precision of the terms used, the internal coherence of the provision, and the absence of semantic or logical ambiguities. The assessment of clarity can be carried out ***ex ante***, that is, before the act is committed, through an abstract analysis of the statutory text, independent of specific situations of application.

It can be observed that foreseeability is linked to the actual ability of the person subject to criminal law to anticipate the criminal legal consequences of their conduct, in light not only of the text of the law, but also of judicial interpretation and established practice. The analysis of predictability is conducted ***ex post*** and ***in concreto***, taking into account the specific circumstances of the case, the normative context, and the degree of accessibility of relevant case law. Predictability concerns the ability to anticipate the state's punitive response, and not exclusively the abstract formulation of the legal norm.

Case Study: **58.** The Court accepts the view according to which a potential litigant is deprived of the possibility of reasonably foreseeing the conditions under which he or she would be held liable under Article 361 para. (1) of the Criminal Code when manufacturing, possessing, selling or using a forged official document that confers rights or releases from obligations and, respectively, the conditions under which he or she would be held liable under Article 361 para. (2) letter c) of the Criminal Code, where the same actions are committed in relation to a document of particular importance [...].

59. Due to the lack of clarity of the provision set out in Article 361 para. (2) letter c) of the Criminal Code of the Republic of Moldova, the choice between this provision and that contained in Article 361 para. (1) of the Criminal Code cannot be made by those competent to apply criminal law other than approximately, based on assessments devoid of objectivity.

60. The contested norm grants the courts a wide margin of discretion, which leads to the existence of judicial decisions containing diametrically opposed interpretations [...].

61. So, the Court observes that the relevant case-law has not developed, with regard to the impugned notion, a meaning capable of constituting an objective benchmark by reference to which its content may be assessed. The judge himself or herself is placed in difficulty, being required to choose between several possible alternatives, in the absence of a clear formulation of the norm and, implicitly, of the applicable sanctioning regime.

62. Consequently, Article 361 para. (2) letter c) of the Criminal Code is susceptible to an extensive interpretation to the detriment of the offender [...].

63. Therefore, in the absence of objective benchmarks, including normative ones, the attribution of particular importance to a document is left to the discretion of those applying criminal law, the litigant thus finding himself or herself in a state of legal uncertainty.

64. In conclusion, summarizing the *above*, the Court finds that the provisions of Article 361 para. (2) letter c) of the Criminal Code are drafted in an imprecise and unclear manner and confer upon the authorities applying them a wide margin of discretion. Consequently, they do not meet the standard of quality required of criminal law and are contrary to Articles 1 para. (3) and 22, read in conjunction with Article 23 para. (2) of the Constitution [7].

Clarity is a necessary but not sufficient condition for predictability. A rule may be clearly worded but applied in an unpredictable manner through expansive, creative, or inconsistent interpretations; conversely, a rule drafted in general terms may achieve a reasonable degree of predictability through consistent and accessible case law. Therefore, the quality of criminal law stems from the interaction between the clarity of the

normative text and the predictability of its application, both of which are indispensable for fulfilling the function of guiding conduct and for upholding the principle of legality in criminalization.

Case Study: **26.** The applicant complained of a violation of article 7 of the Convention [...]. He argued that the definition of the notion of a „medicinal product", as set out in article L. 511 of the Public Health Code, was extremely imprecise and left the courts a wide margin of appreciation [...].

27. The Commission, in essence, endorsed the applicant's point of view. It observed that, although the criteria developed by the Convention institutions in relation to other provisions may be transposed to the field of application of Article 7, that provision nonetheless requires a stricter application of those criteria [...].

31. The Court reiterates that it is a logical consequence of the principle of the general applicability of laws that their wording is not always precise. One of the standard legislative techniques is the use of general categories rather than exhaustive lists. The need to avoid excessive rigidity and to adapt to changing circumstances means that many laws are inevitably couched in terms which are, to a greater or lesser extent, vague. The interpretation and application of such provisions depend on practice.

35. [...] the scope of the notion of foreseeability depends to a considerable degree on the content of the text in question, the field it is intended to cover, and the number and status of those to whom it is addressed. A law may satisfy the requirement of foreseeability even where the person concerned must seek legal advice in order to assess, to a reasonable degree, the consequences of a given action. This is particularly true in the case of persons engaged in a professional activity, who are accustomed to exercising a higher degree of caution. With the benefit of appropriate legal advice, Mr Cantoni, who was moreover the manager of a supermarket, ought to have assessed, at the relevant time, that, having regard to the established case-law of the Court of Cassation and of certain lower courts, there existed a real risk of prosecution for the unlawful sale of medicinal products [...].

36. Consequently, there has been no violation of article 7 of the Convention [8].

In the above case, the Court reaffirmed that the principle of legality in criminal law, as enshrined in Article 7 of the Convention, requires that offences be defined with sufficient clarity and foreseeability, without, however, excluding the use of general terms or the legislative technique of categorisation. The requirement of foreseeability is satisfied where the norm, interpreted in the light of the relevant case-law and, if necessary, with the assistance of legal advice, enables the individual to foresee, to a reasonable degree, the criminal consequences of his or her conduct. The existence of areas of uncertainty at the margins of the application of a provision is not, in itself, incompatible with article 7, provided that the legal framework offers sufficient guidance for the regulation of conduct and the avoidance of arbitrariness.

Case Study: **38.** Mr Kokkinakis challenged the wording of Article 4 of Law No.1363/1938. He criticised the absence of any description of the "objective content" of the offence of proselytism. He considered that this omission was deliberate, as it would allow any form of conversation or communication of a religious nature to be subsumed under that provision. The applicant pointed to the risk of an "extensibility" of the vague notions employed by the legal text, both on the part of the police and, often, on the part of the courts, such as the expressions "in particular" and "indirect attempt" to interfere with the religious beliefs of others [...].

40. The Court has already emphasised that the wording of many statutory provi-

sions is not absolutely precise. The need to avoid excessive rigidity and to keep pace with evolving circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, for example, mutatis mutandis, the judgment in *Müller and Others v. Switzerland* of 24 May 1988, Series A No.133, p.20, § 29). Criminal law provisions relating to proselytism fall within this category. The interpretation and application of such norms depend on practice.

In the present case, there existed a body of consistent domestic case-law (see paragraphs 17-20 above). This case-law, which had been published and was accessible, supplemented the wording of Article 4 and was such as to enable Mr Kokkinakis to regulate his conduct in this field [9].

In a manner similar to the *Cantoni* case, in *Kokkinakis* the Court held that, although criminal norms may be formulated in general and even vague terms, the requirement of foreseeability is satisfied where their interpretation and application are stabilised through consistent, published, and accessible case-law. Thus, clarifying judicial practice may complement the normative text, providing individuals with sufficient guidance to regulate their conduct and to foresee, to a reasonable degree, the criminal consequences of their behaviour.

Case Study: **42.** The Court observes that, in the present case, the Government was not in a position to submit decisions of the domestic courts, whether of the Supreme Court of Justice or of lower courts, establishing that, prior to the judgment delivered in the present case, it had been explicitly held that acts of bribery committed by employees of companies with private capital constituted a criminal offence (see, mutatis mutandis, *Pessino v. France*, No.40403/02, § 34, 10 October 2006).

43. From the extensive application of criminal law it follows that, at least due to the absence of accessible and reasonably foreseeable case-law interpretation, the requirements of Article 7 cannot be regarded as having been satisfied in respect of an accused person. In the present case, the lack of prior case-law concerning the assimilation of acts of bribery committed by employees of a bank to those of "officials" and "other employees" of the institutions provided for in Article 145 of the Criminal Code results from the fact that the Government did not provide precedents in this regard. The action of legal doctrine in freely interpreting a legal provision cannot substitute for the existence of case-law. To reason otherwise would amount to disregarding the object and purpose of this provision, which is to ensure that no one is convicted arbitrarily. Moreover, the Court observes that the Government did not provide any example of doctrinal interpretation establishing the criminal liability of bank employees for acts of bribery.

44. Consequently, even as professionals who could have sought legal advice, it was difficult, if not impossible, for the applicants to foresee the reversal in the case-law of the Supreme Court of Justice and, therefore, to know that, at the time they committed their acts, these could entail a criminal sanction (*a contrario*, *Cantoni*, cited above, § 35, and *Coëme and Others*, cited above, § 150).

45. Furthermore, the Court notes that the appellate court expressly proceeded to an extensive application of criminal law (see above, § 11). The court of cassation did not intend to quash this part of the judgment. It merely found that the applicants fulfilled the conditions required to be recognised as perpetrators of the offence, thereby confirming the interpretation adopted by the appellate court.

48. In these circumstances, the Court considers that, in the present case, there has been a violation of article 7 § 1 of the Convention [14].

In the above case, the European Court found that the criminal provisions in ques-

tion were applied through a broad interpretation of the criminal provision, in the absence of consistent and accessible prior case law that would have predictably established the scope of the active perpetrators of the offense of accepting bribes. The lack of relevant judicial precedents capable of clarifying the meaning and scope of the criminal provision deprived the applicants of the possibility of reasonably anticipating the criminal consequences of their conduct, even if they had sought specialized legal advice. Under these circumstances, the Court held that the requirements of foreseeability and strict interpretation of criminal law, inherent in Article 7 § 1 of the Convention, had not been met, concluding that the criminal interference was incompatible with the principle of legality of criminal offenses.

With regard to the limits of assessing the quality criteria of criminal law provisions, it should be emphasized that the investigating officer, the prosecutor, and the court do not have the authority to rule on the lack of quality standards in a criminal law provision, or on its unclear, unpredictable, or inaccessible nature, for the purposes of constitutional review. Such an assessment falls within the exclusive jurisdiction of the Constitutional Court, by virtue of its role as the guarantor of the supremacy of the Constitution and of the conformity of the law with constitutional provisions. According to Article 134 (1) of the Constitution of the Republic of Moldova: "The Constitutional Court is the sole authority of constitutional jurisdiction in the Republic of Moldova", and according to Article 135(1) (a), it "...exercises, upon referral, constitutional review of laws and resolutions of Parliament, decrees of the President of the Republic of Moldova, resolutions and ordinances of the Government, as well as international treaties to which the Republic of Moldova is a party".

In the event that, during criminal proceedings, serious doubts arise regarding the clarity, predictability, or accessibility of the applicable criminal provision, the only admissible legal mechanism is to refer the matter to the Constitutional Court, in accordance with the law, for a review of constitutionality. This also follows indirectly from the provisions of Article 7(31) of the Code of Criminal Procedure: "Upon the raising of an exception of unconstitutionality and the referral to the Constitutional Court, the court is not entitled to rule on the merits of the referral or on the conformity of the contested provisions with the Constitution, but is limited to verifying that the following conditions are met: a) the subject matter of the exception falls within the category of acts provided for in Article 135 (1) (a) of the Constitution; b) the exception is raised by one of the parties or its representative, or by the court on its own motion; c) the contested provisions are to be applied in the adjudication of the case; d) there is no prior decision of the Constitutional Court concerning the contested provisions".

So, we conclude that failure to meet the quality standards of a criminal law provision cannot be directly established by criminal investigation authorities or courts, but can only be declared, with *erga omnes* effect, by the Constitutional Court. Until such a decision is rendered, the criminal law provision produces its legal effects, and criminal investigation authorities and courts are obligated to give it effect through a strict and restrictive interpretation, in full compliance with the principle of legality in criminal law.

Consequently, the courts and complementary authorities (the investigative body and the prosecutor) are required to apply the criminal law in force, which is presumed to be constitutional, and to interpret it in accordance with the principle of legality, *without being able to determine on their own that the law is unconstitutional or that it lacks quality standards.*

At the same time, in our view, within the process of legally classifying crimes, *compliance with the principle of legality in criminal law imposes a „positive duty of interpretive*

diligence" on criminal investigation authorities, the prosecutor, and the court. This obligation manifests itself in the need for a rigorous assessment *of the quality of the applicable criminal provision*, in light of the requirements of clarity and predictability, which allow for the unequivocal identification of the constituent elements of the offense. In situations where the criminal provision is formulated in vague, unclear terms or imprecise expressions, susceptible to broad interpretations, judicial authorities must adopt a restrictive interpretation, in accordance with the requirements of criminal legality. Any unfavorable broad interpretation or application by analogy of criminal law is inadmissible, as it would lead to a violation of the provisions of Article 3(2) of the Criminal Code, which states: "*Unfavorable broad interpretation and application by analogy of criminal law are prohibited*".

In this regard, it may be asserted that the role of the authorities entrusted with the application of the law is not confined to the mechanical enforcement of statutory provisions, but rather entails a genuine function as guarantors of criminal legality, called upon to prevent normative imperfections from becoming a source of legal uncertainty and of interference with the fundamental rights of persons subject to criminal liability.

Conclusions. In light of the above, we conclude that the principle of legality in criminal law cannot be understood solely as a formal requirement for the existence of a written criminal law provision, but necessarily entails compliance with substantive standards of legal quality, without which criminal intervention loses its legitimacy in a state governed by the rule of law. Criminal legality is thus established as a principle with a complex content, encompassing accessibility, clarity, predictability, as well as the strict interpretation of the criminal provision.

The case law analyzed demonstrates that imprecisely formulated criminal provisions grant judicial authorities an excessive margin of discretion, favoring broad and unfavorable interpretations and the application of legal provisions by analogy, both of which are strictly prohibited in criminal law. Above all, the quality of the criminal law provision emerges as a sine qua non condition for the correct legal classification of offenses, for the predictability of the state's criminal response, and for the effective protection of the individual's fundamental rights. Compliance with the quality standards of the law is not an abstract ideal, but a concrete and permanent requirement of the rule of law, without which criminal law risks transforming from an instrument of social protection into a mechanism of legal uncertainty.

Bibliographical references

1. Beccaria C. Dei delitti e delle pene, 1764, Cap. 5 OSCURITA` DELLE LEGGI, p.19. Available: file:///C:/Users/user/Downloads/dei_de_p.pdf (accessed 20.04.2026).
2. Buga L. Tehnica legislativă penală. Teză de doctorat, Chișinău, 2016.
3. Carrara F. Programma del corso di diritto criminale: parte generale / dettato nella R. Universita di Pisa dal professore Francesco Carrara. 5 edizione con aggiunte: Tipografia Giusti, 1877.
4. Casses A. International Criminal Law. Second edition. Oxford University Press. New York, 2008. pp.36, 45.
5. United Nations General Assembly. Universal Declaration of Human Rights, adopted on 10 December 1948, Paris, Resolution 217 A (III).
6. Demchuk P. Legality and legal certainty in criminal law: The issues of differentiation. In: Juridical Scientific and Electronic Journal. p.3.
7. Extras Hotărârea CC nr.12 din 14.05.2018 privind excepţia de neconstituţionalitate a Articolului 361 alin. (2) lit. c) din Codul penal (confecţionarea, deţinerea, vânzarea sau

folosirea documentelor de importanță deosebită false) (Sesizarea nr.25g/2018). În: Monitorul Oficial nr.176-180, din 01.06.2018.
8. Extras din Hotărârea ChEDO din 11.11.1996 CANTONI v. FRANCE, §26-36. Disponibil: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58068%22]}.
9. Hotărârea ChEDO din 25.05.1993, Kokkinakis v. Grecia, §36-40. Disponibil: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58068%22].
10. Ghid privind articolul 7 din Covenția Europeană a drepturilor omului. Actualizat la 28 februarie 2025. Guide_Article_7_RUM.pdf. (accessat 27.04.2026).
11. Hotărârea CC a RM asupra excepției de neconstituționalitate a prevederilor alin.(6) art.63 din Codul de procedură penală nr.26 din 23.11.2010. În: Monitorul Oficial nr.235-240/27 din 03.12.2010.
12. Hotărâre CC a RM pentru controlul constituţionalităţii Legii nr.261 din 1 noiembrie 2013 cu privire la Colegiul Medicilor din Republica Moldova nr.13 din 15.05.2015. În: Monitorul Oficial nr.241-246 din 28.08.2015.
13. Hotărârea CtEDO din 25.03.1983, Silver și alții v. Regatului Unit, § 87. Disponibil: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57577%22].
14. Hotărârea ChEDO din 24.05.2007, Dragotoniu şi Militaru-pdhorni v. România, §8, 10-13, 40, 42-45. Disponibil: https://ier.gov.ro/wp-content/uploads/cedo/Cauza-Dragotoniu-%C8%99i-Militaru-%C3%AEmpotriva-Rom%C3%A2niei.pdf.
15. Lista de verificare privind statul de drept, adoptată de Comisia de la Veneția în cadrul celei de a 106-a Sesiuni Plenare (Veneția, 11-12 martie 2016), § 58-59. Disponibil: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e.
16. Robinson P.H. The structure and limits of criminal law. University of Pennsylvania Law School. USA. p.3.
17. Roxin C. Derecho penal. Parte general. Tomo I. Fundamentos. La estructura de la teoria del delito. Ed. Civitas, Madrid, 1997. p.141.
18. Прозоров В.Ф. Качество и эффективность хозяйственного законодательства в условиях рынка. Москва, 1991, citat de Гатилова А.С., Качество законов как объект прогнозирования, Юридическая наука. 2012. № 4, с.7.

CZU 343.1 + 004 **DOI: https://doi.org/10.5281/zenodo.20813229**

SATELLITE IMAGERY INVESTIGATION AS A METHOD OF DETECTING AND RECORDING EVIDENCE OF CRIMINAL ACTIVITY

Oleksandr MANZHAI,
PhD, University Professor,
Head of Cybercrime Counteraction Department,
Kharkiv National University of Internal Affairs,
Ukraine
ORCID: 0000-0001-5435-5921

Iryna MANZHAI,
Senior Lecturer,
Information Systems and Technologies Department,
Kharkiv National University of Internal Affairs,
Ukraine
ORCID: 0000-0003-2664-4472

Abstract

The paper examines the methodology and practical aspects of using satellite imagery in law enforcement activities to identify and record traces of crimes. It elucidates the potential of contemporary remote sensing services and geographic information systems in the context of documenting destruction, fires, and environmental disasters precipitated by military aggression.

The text delineates the methodology for calculating the NDVI index, which is employed to monitor changes in vegetation cover, and the NDWI index, which is utilized to document the repercussions of flooding. The text employs the Kakhovka hydroelectric power plant as a case study to illustrate the destruction of this facility.

The paper emphasizes the technical nuances of data processing, particularly the necessity of incorporating reflection coefficients from satellite scene metadata to ensure the accuracy of calculations. The practical significance of the study is confirmed by examples of analysis of the occupied territories of the Kharkiv and Kherson regions, where, by comparing multispectral images, it was possible to establish facts of long-term land disuse and large-scale destruction (flooding) of civilian infrastructure.

Keywords: satellite imagery, spectral analysis, NDVI, NDWI, war crimes.

INVESTIGAREA IMAGINILOR SATELITARE CA METODĂ DE DEECTARE ȘI ÎNREGISTRARE A PROBELOR ACTIVITĂȚII CRIMINALE

Abstract

Articolul examinează metodologia și aspectele practice ale utilizării imaginilor satelitare în activitățile de aplicare a legii pentru identificarea și documentarea urmelor infracțiunilor. Sunt evidențiate posibilitățile serviciilor moderne de teledetecție și ale sistemelor informaționale geografice în contextul documentării distrugerilor, incendiilor și dezastrelor ecologice cauzate de agresiunea militară.

Textul prezintă metodologia de calcul a indicelui NDVI, utilizat pentru monitorizarea modificărilor în acoperirea vegetală, precum și a indicelui NDWI, folosit pentru documentarea consecințelor inundațiilor. Distrugerea centralei hidroelectrice de la Kahovka este utilizată ca studiu de caz pentru ilustrarea aplicării acestor metode.

Lucrarea evidențiază particularitățile tehnice ale procesării datelor, în special necesitatea utilizării coeficienților de reflectanță din metadatele scenelor satelitare pentru asigurarea acurateței calculelor. Relevanța practică a studiului este confirmată prin exemple de analiză a teritoriilor ocupate din regiunile Harkiv și Herson, unde, prin compararea imaginilor multispectrale, au fost stabilite cazuri de neutilizare îndelungată a terenurilor și distrugeri de amploare (inundații) ale infrastructurii civile.

Cuvinte-cheie: imagini satelitare, analiză spectrală, NDVI, NDWI, crime de război.

Introduction. Annually, law enforcement officials are increasingly tasked with the analysis of satellite imagery to address operational objectives. In this regard, it is noteworthy to mention a seminal episode in which the investigative team endeavored to identify the serial killer Elvis, who was active in the Kyiv region of Ukraine during the 2000s. To this end, the team meticulously studied NATO satellite images and determined the probable make and color of the vehicle in which the perpetrator was traveling [1]. In the context of russian aggression, law enforcement officials are compelled to engage in the analysis of satellite imagery to document war crimes, as physical access to the scene is frequently impracticable [2].

By analyzing satellite data, it is possible to determine:

– Destruction and locations of fires;
– Locations of large technical facilities;
– Construction sites;
– The appearance of new or degradation of old roads;
– Mass graves.

If the changes detected are properly documented, they can be used as evidence in criminal proceedings [3].

Consequently, law enforcement agencies are tasked with acquiring fundamental competencies in the utilization of satellite imagery, along with the automation of its processing and analysis.

The objective of the study is to elucidate the intricacies of the methodology employed in the analysis of satellite imagery during law enforcement operations, employing the Ukrainian territories as a case study.

A fundamental objective in the analysis of satellite imagery is the identification of alterations in a particular region over a designated interval. The following example, which analyzes satellite images of the village of Velykyi Vyselok in the Dvorichanska settlement community of the Kupianskyi district in the Kharkiv region, will elucidate this point. To accomplish this objective, we will utilize the services of mapflow.ai, planet.com, and gpxeditor.co.uk/map.

The Mapflow tool is a valuable asset in the analysis of object types and sizes within the specified area. A variety of available tools can be selected to perform such an analysis, such as downloading images from ready-made datasets or one's own satellite image (Fig. 1).

Fig. 1. Determining the data source for analysis

Subsequent to the selection of the relevant data source, the user must designate the elements and dimensions on the map to be identified. After a while, the results of the

service will be apparent, displaying the recognized objects. By clicking on these objects, the corresponding dimensions will be revealed (e.g., the size of buildings, the height of trees) (Fig. 2).

Fig. 2. Recognition results

Now, let's compare photos of the village taken in August 2021 and August 2025 using the planet.com service viewer (Fig. 3). The primary benefit of planet.com is that it generally allows for the tracking of changes in the area with a precision of up to a day, thereby facilitating more precise determination of the temporal context of criminal activities or other forms of transgression.

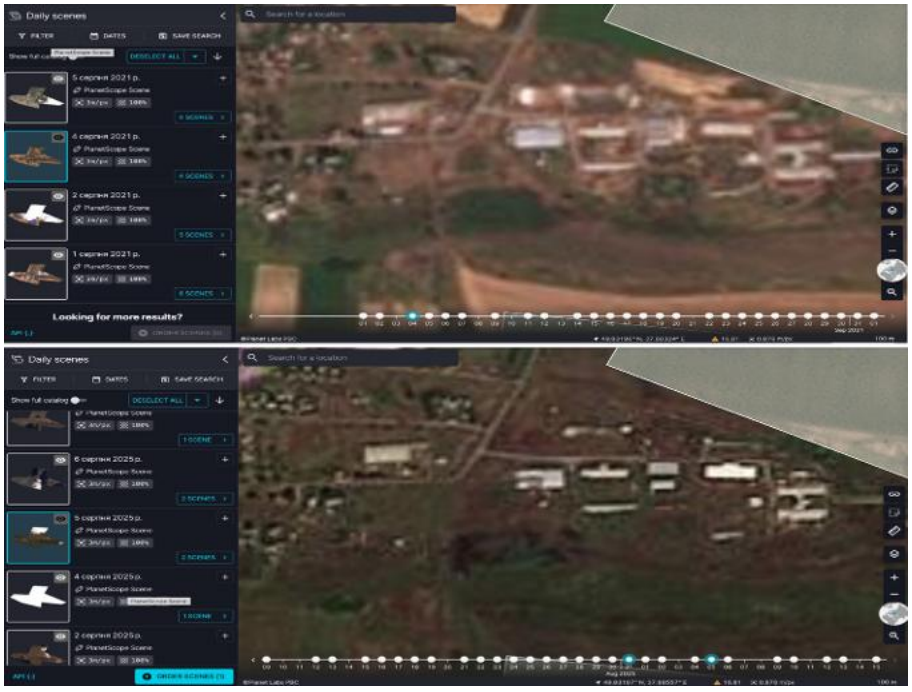


Fig. 3. Comparison of photographs

The image, even in its original state, reveals substantial destruction of buildings, unused agricultural land, and overgrown secondary roads and areas surrounding residential structures. This phenomenon is indicative of the magnitude of the crimes committed. However, to achieve a more comprehensive understanding of the situation, it is imperative to process images with higher resolution. These can be procured from specialized companies for a separate fee.

It is recommended that the following approach be considered as a less costly option for studying the area.

The initial step entails conducting an area study employing low-resolution images, with the understanding that these images are linked to a specific date.

In the event that the visual characteristics of the situation correspond to those depicted on high-resolution maps, it is imperative to undertake a more thorough examination of the area utilizing more precise input data. For this purpose, one may avail oneself of the website gpxeditor.co.uk/map (Fig. 4).

Fig. 4. Viewing a satellite image of the village of Pischane using gpxeditor.co.uk/map

The following indicators can be used to identify damage in aerial photographs (see Table 1) [4].

There is damage	Damage from above cannot be identified
The quarter has a lattice-like structure	The quarter looks like a pattern of typical geometric shapes
Clear outlines of buildings	The blurred nature of building edges
The roof is varied, the interior of the house is visible	The roof looks like a monochromatic geometric shape
Uneven texture	Uniform color and texture
Debris (craters) in the form of dots can be seen around the buildings	No debris (craters) visible

Table 1. Some indicators of damage

An alternative, effective method for identifying changes in the terrain is to analyze satellite images in different spectral ranges [5]. This method can be used to more clearly visualize the vegetation cover of territories, identify fire sites, new graves, flooded areas, etc.

A methodology for the analysis of satellite images within the spectral range involves the utilization of a combination of an aerial photography service provider and a mapping program. Aerial photographs can be obtained using the planet.com service (alternatively, xpress.maxar.com or browser.dataspace.copernicus.eu can be used, but in general the images will be of low quality), and QGIS can be used as a mapping program.

In order to perform spectral analysis of the images, it is necessary to export data from the satellite in at least four bands: green, blue, red, and infrared. Subsequent to loading the satellite data into QGIS, it is imperative to verify that the frequencies are accurately defined (green, blue, red) within the layer settings. In the event that the image is not displayed correctly on the map, the issue must be rectified.

Going forward, the Normalized Difference Vegetation Index (NDVI) will be used to calculate the characteristics of the vegetation cover of a particular area. The NDVI is a simple quantitative indicator of the amount of photosynthetically active biomass. The calculation of this index is performed using the following formula:

$$NDVI = \frac{NIR - Red}{NIR + Red},$$

where NIR is the reflective infrared region of the spectrum, and Red is the visible red region of the spectrum. The NDVI index is displayed using a standardized continuous gradient or discrete scale, with values ranging from -1 to +1.

In order to construct an NDVI layer within the QGIS environment, it is possible to utilize the raster calculator to formulate the relevant formula (see Figure 5).

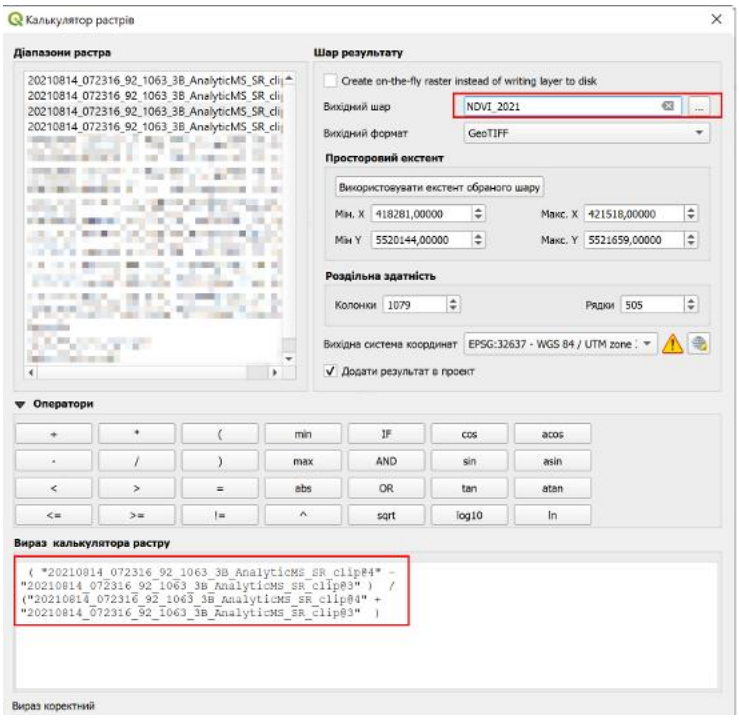


Fig. 5. Raster calculator

!

There are two important concepts in satellite imaging:

1) TOA Radiance (radiance at the upper boundary of the atmosphere) – the amount of energy (light) that reaches the satellite sensor from the Earth. It includes light reflected from the Earth's surface, atmospheric scattering, and solar illumination.

2) TOA Reflectance (reflection at the top of the atmosphere) – a normalized value that shows how much of the sunlight is reflected by the Earth's surface, without taking into account the intensity of solar illumination at the time of imaging. This is a dimensionless value, from 0 to 1, which is used to compare images taken at different times or under different lighting conditions.

When employing planet.com images for analysis, it is imperative to recognize that the initial satellite data (PlanetScope Scene) is presented in the form of radiance values. However, for the execution of NDVI calculations, the utilization of reflectance values is essential. In order to execute the conversion of radiance to reflectance, it is necessary to multiply each pixel value by a specific coefficient contained within the metadata (XML file) that is attached to the PlanetScope scene. Consequently, when calculating NDVI in a raster calculator, it is imperative that the value of each channel be multiplied by the coefficient found in the XML metadata. The following keywords should be used when searching: bandNumber>, followed by the channel number, and reflectanceCoefficient>, followed by the coefficient value in floating point format. Specifically, if the coefficient is specified as 4.120174226578556e-05 in the file, it should be multiplied by 00000.4120174226578556.

Furthermore, it is imperative to comprehend the allocation of numbers to each channel in a given scene during the process of calculation. For instance, according to the documentation provided by planet.com (docs.planet.com/data/imagery/planetscope/) for a 4-channel scene: Band 1 corresponds to the blue spectrum, Band 2 corresponds to the green spectrum, Band 3 corresponds to the red spectrum, and Band 4 corresponds to the near-infrared spectrum.

A comparison of the corresponding images and NDVI layers for them is shown in Fig. 6.

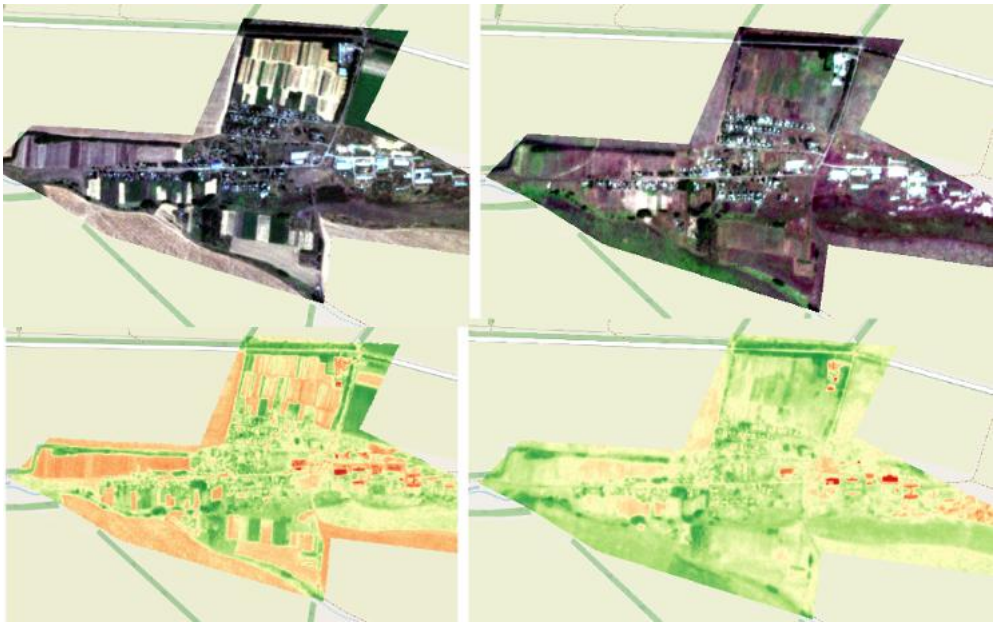


Fig. 6. Comparison of satellite images of the village of Velykyi Vyselok in August 2021 and August 2025

As evidenced by the images, the areas that were previously cultivated are now covered with green vegetation, indicating that the majority of the inhabitants have most likely departed from the village.

To ensure the highest degree of accuracy in the analysis of satellite images captured at brief intervals, the NDVI parameter must be calculated for each image. Subsequently, the discrepancy between the NDVI layers obtained from this process can be determined through the utilization of a raster calculator. The result of this manipulation is demonstrated in Figure 7. In this case, the analysis utilized aerial photographs of the village of Radkivka in the Kupiansky district of the Kharkiv region, captured at 10-day intervals in August 2025, as the input data. The layers formed for these images are displayed in the upper part of the figure, the corresponding NDVI layers are shown in the lower part, and the layer reflecting the difference between the constructed NDVI layers is located at the bottom.

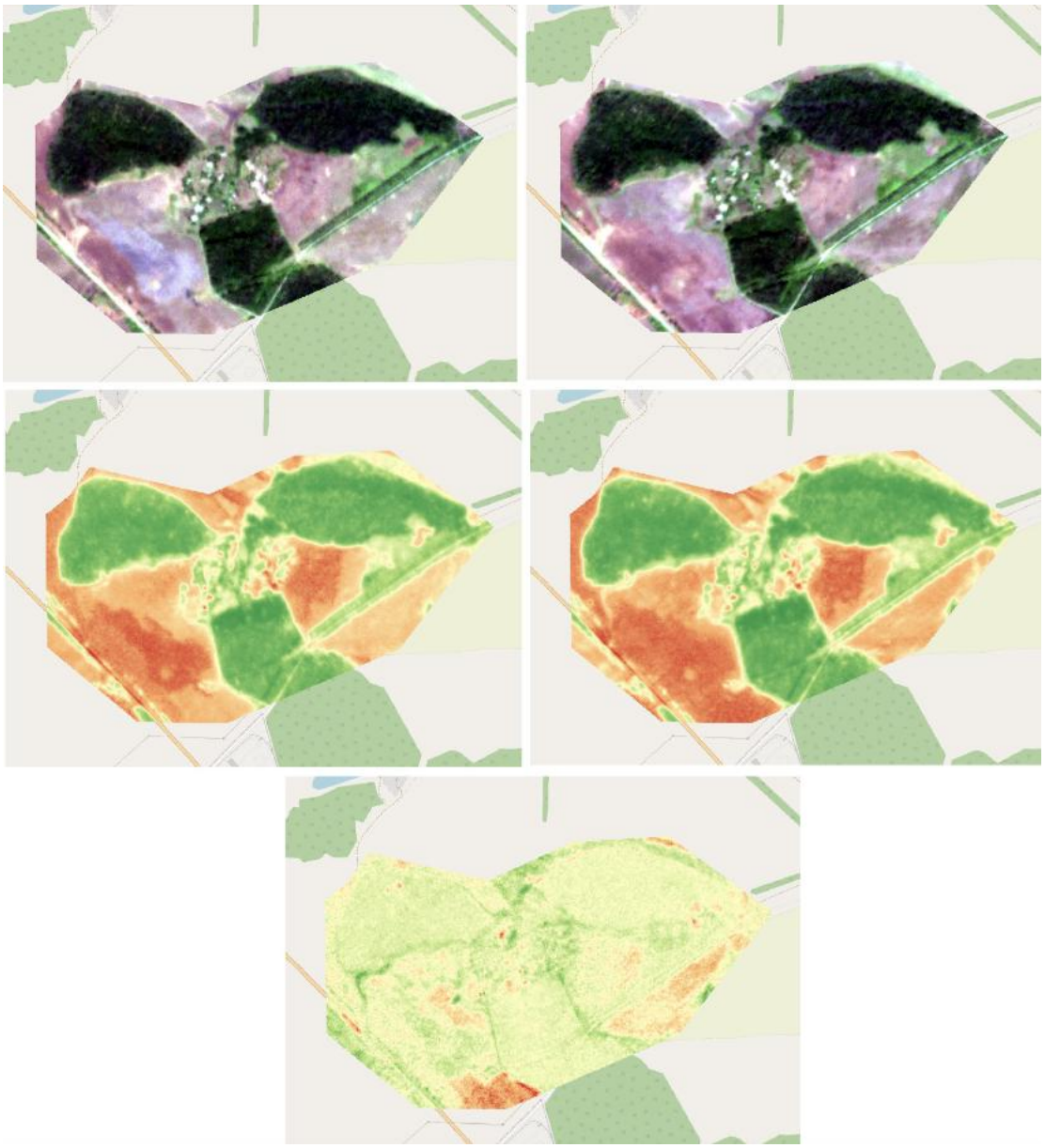


Fig. 7. Layer showing changes in vegetation cover over 10 days in an area of intense combat operations

To enhance the visibility of the variation in vegetation coverage, it is possible to render certain neutral colors of the layer transparent. Subsequent to these settings, the calculated changes can be displayed either in conjunction with the map layer or separately (Fig. 8).

Fig. 8. Visual representation of changes in vegetation cover

To study changes in the water surface, the NDWI (Normalized Difference Water Index) can be used, which is calculated using the following formula:

$$NDWI = \frac{Green - NIR}{Green + NIR},$$

where NIR is the reflective infrared region of the spectrum, and Green is the visible green region of the spectrum. These particular segments of the electromagnetic spectrum were selected for the formula because the water surface exhibits maximum reflection in the green spectrum and minimum reflection in the infrared spectrum. It is noteworthy that index values approaching 1 are indicative of elevated water content. A notable disadvantage of NDWI is its sensitivity to the presence of building structures, which can result in erroneous assessments of water bodies.

The NDWI index has been employed to document the repercussions of environmental crimes in southern Ukraine, attributable to the actions of the occupiers. To illustrate this phenomenon, we will analyze the consequences of the Kakhovka HPP dam's destruction on June 6, 2023. To do so, we will study aerial photographs from planet.com for June 5 and 6, 2023.

It is important to note that when displaying the difference on the layer, the NDWI index can be set to -0.1, thereby ensuring the visibility of only changes in the water cover [7–8]. Additionally, the transparency of neutral colors can be adjusted to display only changes in the water cover.

The calculation of NDWI indices for each satellite image, in conjunction with their differences (see Figure 9), has enabled the identification of flooded areas, which can then be documented in criminal procedural documents. The results of the calculations demonstrate the inundation of buildings, arable land, and structures.

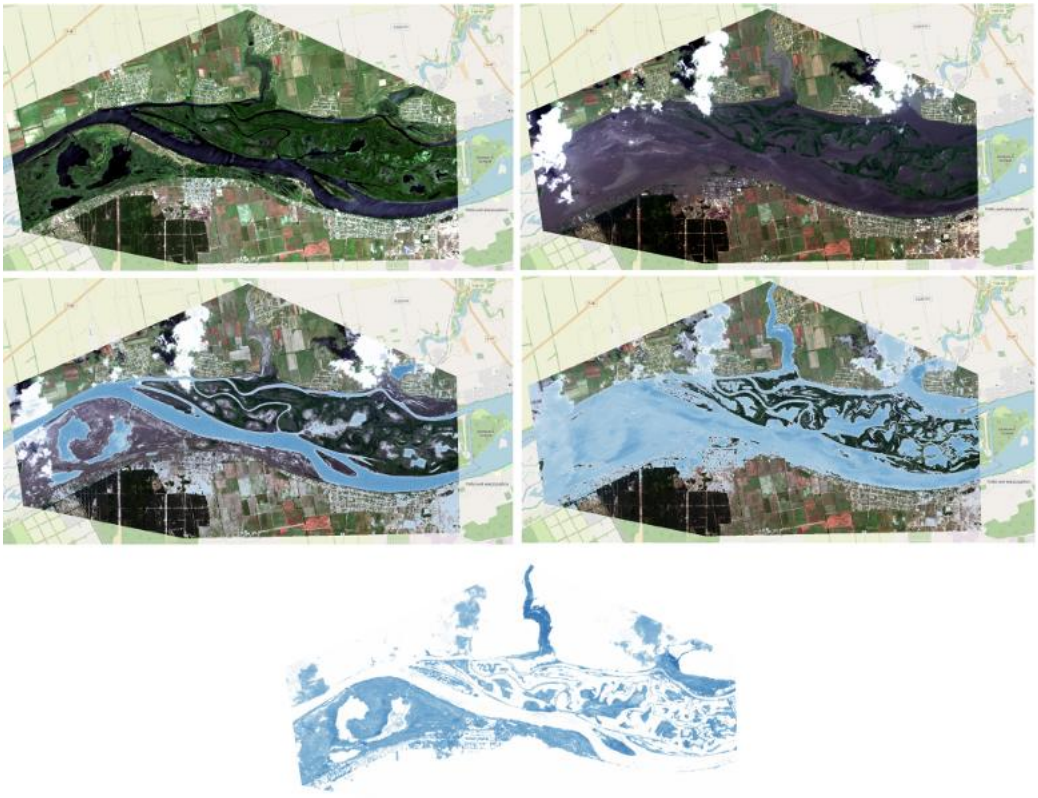


Fig. 9. The result of the Dnieper River overflowing after the Kakhovka Hydroelectric Power Plant dam was blown up

Among the promising areas for studying satellite images in law enforcement work, attention should be paid to the use of the Normalized Difference Middle InfraRed Index (NDMI; SWIR22 & SWIR16), Enhanced Vegetative Index 2 (EVI 2), and Nitrogen Reflectance Index (NRI) during investigations. To automate the process of spectral analysis and image comparison in QGIS, one may also utilize the Semi-Automatic Classification, Orfeo Toolbox, and Change Detection plugins. For instance, the Semi-Automatic Classification plugin facilitates the identification of typical objects on the map, the performance of classifications, the comparison of satellite images captured at varying temporal points, and the execution of numerous other calculations. The integration of these tools with artificial intelligence algorithms facilitates the effective analysis of voluminous digital data, thereby markedly reducing investigation time. Automated systems based on artificial intelligence have been demonstrated to possess the capability of detecting anomalies, such as changes in land use or damaged buildings, with a reasonable degree of accuracy. This capability serves to minimize the human factor during the analysis process.

The analysis of the territory can be also facilitated by the utilization of services that meticulously record the amount of artificial light reaching space from diverse geographical locations on the planet. One such tool is the Dark Light Viewer (https://gee-nightlights-474517.projects.earthengine.app/view/darklight-viewer). By conducting a com-

parative analysis, it is possible to track artificial light activity in specific areas at different time intervals (Fig. 10). In this particular instance, the presence of warm hues serves as an indication of a substantial decrease in artificial lighting subsequent to the commencement of the active phase of the russian invasion.

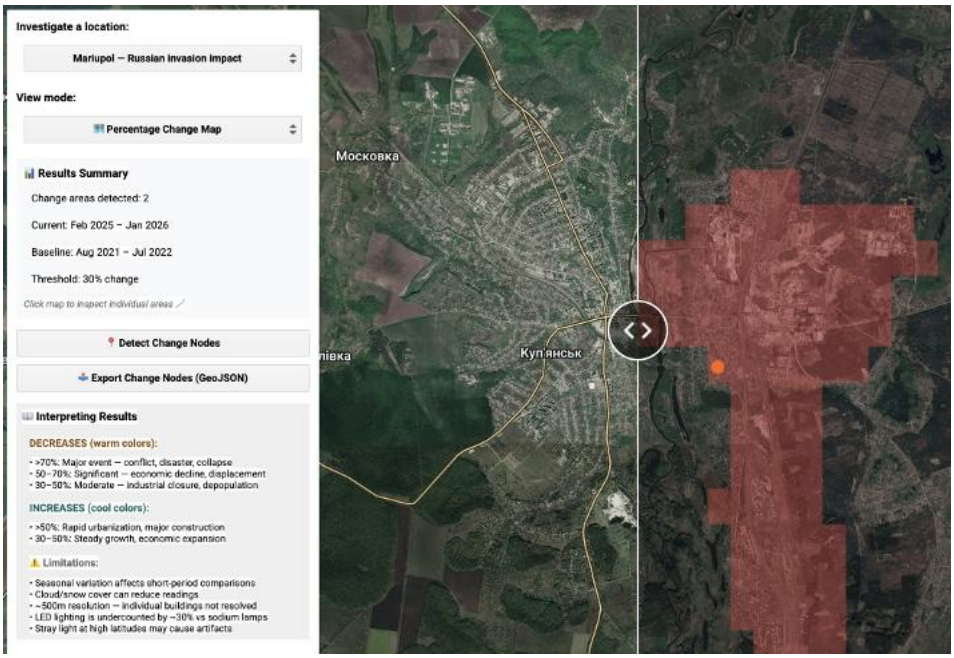


Fig. 10. Output from Dark Light Viewer

Conclusions. The utilization of satellite imagery in contemporary police work, particularly in the context of documenting war crimes and environmental crimes, constitutes a critically essential instrument. This technology enables the remote identification of destruction, burial sites, equipment locations, and other pertinent information in circumstances where physical access to the area is restricted. The utilization of satellite imaging services with a high frequency enables the monitoring of alterations with a precision of up to 24 hours. This facilitates the accurate determination of the temporal context in which criminal activities are perpetrated. The integration of spectral analysis with the NDVI vegetation index and the NDWI water index within geographic information systems (GIS) facilitates the creation of a visual record of changes in vegetation cover and flooding. This can offer significant evidentiary value in legal proceedings, contingent upon the existence of proper procedural documentation. The further development of the methodology necessitates the implementation of radar (SAR) and hyperspectral (HSI) sensing technologies, the widespread use of machine learning algorithms to automate the search for traces of crimes (including for the integration of textual information with relevant satellite images [9]), and strict compliance with international standards (the Berkeley Protocol) to ensure the legal admissibility of digital evidence in national and international courts.

Bibliographical references

1. Zaborona. (n.d.). Maniak pomizh namy. Zvidky berutsia seriini ubyvtsi, yak yikh lovliat, i chomu sohodni tsoho nikhto ne robyt. Chastyna persha [The maniac among us. Where serial killers come from, how they are caught, and why no one does it today. Part one]. Available: https://zaborona.com/interactive/maniak-posered-nas/ (Retrieved on

January 17, 2026).
2. Zaffar H. (n.d.). Using Satellite Imagery to Investigate War Crimes. Global Investigative Journalism Network. Available: https://gijn.org/stories/gijc25-satellite-imagery-investigate-war-crimes/ (Retrieved on March 2, 2026).
3. Van Wyk J.A. (2019). Pixels, politics and peace: the forensic use of satellite imagery. In: Journal of African Foreign Affairs, 6(2), p.31-50. Available: https://doi.org/10.31920/2056-5658/2019/v6n2a2.
4. Texty.org.ua. (n.d.). Karta ruinuvan. Analiz suputnykovykh znimkiv [Map of destruction. Analysis of satellite images]. Available: https://texty.org.ua/projects/109019/karta-rujnuvan/?src=main (Retrieved on January 17, 2026).
5. Oliver L. (n.d.). Vykorystannia suputnykovykh znimkiv u rozsliduvanniakh: Porady Laboratorii dokaziv Amnesty International [Using satellite imagery in investigations: Tips from the Amnesty International Evidence Lab]. Global Investigative Journalism Network. Available: https://gijn.org/ua/istorii/vikoristanna-suputnikovih-znimkiv-u-rozsliduvannah-poradi-laboratorii-dokaziv-amnesty-international/ (Retrieved on January 17, 2026).
6. Rouse J.W., Haas R.H., Schell J.A., & Deering D.W. (1973). Monitoring vegetation systems in the Great Plains with ERTS. In: Third ERTS Symposium, NASA SP-351 I, p.309-317.
7. McFeeters S.K. (1996). The use of the Normalized Difference Water Index (NDWI) in the delineation of open water features. In: International Journal of Remote Sensing, 17(7), p.1425-1432. Available: https://doi.org/10.1080/01431169608948714.
8. Planet University. (n.d.). Viewing a Flood Event with the Planet Explorer QGIS Plugin. Retrieved August 22, 2025. Available: https://university.planet.com/viewing-a-flood-event-with-the-planet-explorer-qgis-plugin/1744045/scorm/37wzhfq5bstga.
9. Sticher V., Bara C., Kotajoki J., et al. (2025). Advancing conflict research and response through satellite-derived data [Preprint]. ResearchGate. Retrieved March 2, 2026. Available: https://www.researchgate.net/publication/396416848_Advancing_conflict_research_and_response_through_satellite-derived_data.

CZU 343.98:004.8 **DOI: https://doi.org/10.5281/zenodo.20813376**

DATA ANALYSIS IN CRIMINOLOGY: MODERN TOOLS FOR CRIME PREVENTION AND CONTROL

Iurie LARII,
PhD, University Professor,
Department of Criminal Law and Criminology,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-4277-535X

Abstract

The digital transformation of society has brought about significant changes in the ways information relevant to crime prevention and crime control is collected, processed, and utilized. Data analysis has become one of the most important tools employed by law enforcement agencies, enabling the identification of crime patterns, the anticipation of criminogenic risks, and the optimization of decision-making processes.

This study examines the principal methods and modern data analysis tools used in criminology, with a particular focus on predictive systems, artificial intelligence, geospatial analysis, social network analysis, and machine learning technologies. The experiences of several countries, including the United States, Germany, the United Kingdom, and the Netherlands, are analyzed, along with the ethical, legal, and operational challenges associated with the use of these technologies.

The findings highlight that data analysis has become an indispensable instrument of modern criminology; however, its effectiveness depends on data quality, algorithmic transparency, and respect for fundamental human rights.

Keywords: data analysis, digital criminology, artificial intelligence, crime prevention, predictive policing.

ANALIZA DATELOR ÎN CRIMINOLOGIE: INSTRUMENTE MODERNE DE PREVENIRE ȘI COMBATERE A CRIMINALITĂȚII

Abstract

Transformarea digitală a societății a determinat o schimbare semnificativă în modalitățile de colectare, procesare și valorificare a informațiilor relevante pentru prevenirea și combaterea criminalității. Analiza datelor a devenit unul dintre cele mai importante instrumente utilizate de instituțiile responsabile de aplicarea legii, oferind posibilitatea identificării tiparelor infracționale, anticipării riscurilor criminogene și optimizării procesului decizional. Studiul examinează principalele metode și instrumente moderne de analiză a datelor utilizate în criminologie, cu accent asupra sistemelor predictive, inteligenței artificiale, analizei geospațiale, analizei rețelelor sociale și tehnologiilor de tip „învățare automată".

Sunt analizate experiențele unor state precum Statele Unite ale Americii, Germania, Regatul Unit și Țările de Jos, inclusiv provocările etice, juridice și operaționale asociate utilizării acestor tehnologii.

Concluziile evidențiază faptul că analiza datelor reprezintă un instrument indispensabil al criminologiei moderne, însă eficiența sa depinde de calitatea datelor, transparența algoritmilor și respectarea drepturilor fundamentale ale omului.

Cuvinte-cheie: analiza datelor, criminologie digitală, inteligență artificială, prevenirea criminalității, poliție predictivă..

Introduction. The profound transformations generated by the digital revolution have produced significant changes in almost all areas of social life, including the sphere of criminality and the institutional mechanisms designed for its prevention and control. The development of information technologies, the expansion of internet access, the exponential growth in the volume of data generated daily, and the emergence of new forms of social interaction have created unprecedented opportunities for criminological research and for the activities of law enforcement agencies. At the same time, these transformations have facilitated the emergence of new forms of crime characterized by increased complexity, high mobility, and the ability to transcend national borders with ease.

Within the context of the digital society, traditional methods of crime analysis often prove insufficient to address the challenges generated by the dynamics of contemporary criminal phenomena. Whereas criminological research in the past was primarily based on the analysis of official statistics and the retrospective interpretation of offences that had already occurred, the emphasis has increasingly shifted toward proactive methods aimed at the early identification of criminogenic risks and the anticipation of the evolution of criminal phenomena. This paradigm shift is driven by the development of data analysis technologies, which make it possible to process vast quantities of information and transform them into knowledge useful for substantiating strategic and operational decisions [1, pp. 3-15].

Data analysis has thus become one of the most important instruments of contemporary criminology. Through advanced statistical techniques, artificial intelligence algorithms, geographic information systems, and machine learning mechanisms, researchers and practitioners are able to identify criminal patterns, assess risk factors, and develop predictive models capable of contributing to the effective prevention and control of crime. The importance of these instruments is reflected in their ability to capitalize on highly diverse sources of information, including police databases, judicial records, socio-economic data, information originating from the online environment, and real-time data streams generated by modern digital infrastructures.

The relevance of this topic is determined by the need to adapt criminological research and law enforcement institutions to the realities of the information society. The growth of cybercrime, the expansion of online fraud, the use of social networks for criminal purposes, and the strengthening of the transnational dimension of organized crime require the adoption of modern tools for the analysis and interpretation of information. Under these conditions, data analysis no longer represents merely an auxiliary instrument for investigative activities; rather, it becomes a central element in the process of formulating public security policies and managing criminogenic risks.

The importance of this research is further supported by the increasing orientation of the scientific community toward the concept of evidence-based criminology. According to this approach, crime prevention and crime control measures must be grounded in empirical data and in the objective assessment of the effectiveness of institutional interventions. In this context, data analysis provides the methodological support necessary for identifying criminal trends, evaluating the impact of public policies, and optimizing intervention strategies [2, p. 4].

The purpose of the present study is to examine the role of data analysis in contemporary criminology and to highlight the principal modern instruments used for crime prevention and control. The research seeks to identify the advantages and limitations associated with the use of data-driven technologies, as well as to analyze relevant international experiences in this field.

Research methodology. From a methodological perspective, the research is based

on the application of both general and special scientific methods of investigation. The methods employed include analysis and synthesis, the comparative method, the systemic method, the logical method, and the documentary method. In addition, doctrinal sources, normative acts, institutional reports, and empirical studies relevant to the topic under examination have been utilized.

Discussions and results obtained. I. Data Analysis in Criminology: Conceptual and Methodological Delimitations.

1.1. The Concept of Criminological Data Analysis. Over the last decades, the development of information technologies and the accelerated digitalization of society have generated profound transformations in the field of criminological research. These changes have facilitated the emergence of new methods for collecting, processing, and interpreting information relevant to understanding criminal phenomena, leading to the consolidation of the role of data analysis in both scientific research and practical activities aimed at crime prevention and control. At present, data analysis is regarded as one of the most important components of modern criminology, being employed both in the theoretical study of criminal phenomena and in the activities of institutions responsible for law enforcement.

In a broad sense, criminological data analysis may be defined as the systematic process of collecting, integrating, organizing, processing, and interpreting information concerning crime, offenders, victims, criminogenic factors, and society's reaction to criminal phenomena. The primary purpose of this process is to identify patterns, relationships, and trends that make it possible to explain the mechanisms underlying criminal behavior and to substantiate effective measures for crime prevention and control [3, p. 7].

Specialized literature emphasizes that criminological data analysis goes beyond the traditional statistical approach, which is limited to describing criminal phenomena through quantitative indicators. Contemporary criminology seeks not only to identify the dimensions and structure of crime but also to explain the causes, conditions, and mechanisms that facilitate the emergence of criminal behavior. In this context, data analysis becomes an essential instrument for transforming fragmented information into knowledge useful both for scientific research and for decision-making processes [4, p. 16].

The development of this field is closely linked to the emergence of the concept of evidence-based criminology, which promotes the formulation of crime prevention and control policies on the basis of empirical data and scientific research findings. According to this approach, the effectiveness of institutional interventions must be assessed through objective methods of analysis and measurement, while decisions concerning resource allocation and the implementation of security strategies must be supported by verifiable information.

In practice, criminological data analysis employs information derived from a wide variety of sources. Among the most important are official crime statistics, police databases, records maintained by prosecution services and courts, information from the penitentiary system, victimization studies, sociological research, demographic and economic data, as well as information generated in the online environment. The integration of these sources enables the development of a multidimensional perspective on criminal phenomena and facilitates the identification of relationships between the individual, social, and situational factors that influence crime.

The importance of data analysis is further amplified by recent transformations in criminal phenomena. Globalization, the development of digital technologies, and the expansion of cyberspace have contributed to the emergence of new forms of crime characterized by high mobility, operational complexity, and the capacity to transcend national

borders. Under such conditions, traditional investigative and analytical methods become insufficient, making it necessary to employ instruments capable of processing large volumes of information and rapidly identifying patterns relevant to the prevention and suppression of criminal activities [5, pp. 21-22].

Consequently, criminological data analysis should not be viewed exclusively as a technical method of information processing but rather as a fundamental component of contemporary criminological research and modern security systems. The ability to transform data into relevant knowledge represents one of the essential prerequisites for the development of effective crime prevention and control policies in the digital society.

1.2. Types of Analysis Used in Criminology

The diversification of information sources and the development of data processing technologies have led to the emergence of distinct forms of analysis employed in criminological research and law enforcement activities. Specialized literature identifies four fundamental categories of analysis: descriptive analysis, diagnostic analysis, predictive analysis, and prescriptive analysis.

Descriptive analysis represents the basic level of the analytical process and aims to describe the characteristics of criminal phenomena. It answers the question "What happened?" and involves the use of statistical methods to highlight the frequency, distribution, and structure of crime. Through this form of analysis, it is possible to identify general trends in criminal phenomena, changes occurring over time, and differences existing between various regions or social groups [2, p. 46].

Diagnostic analysis seeks to identify the causes and conditions that have led to the occurrence of a particular criminal phenomenon. It attempts to answer the question "Why did it happen?" and employs statistical, sociological, and criminological methods to examine the relationships between crime and various risk factors. Diagnostic analysis occupies an important place in criminological research because it contributes to understanding the mechanisms underlying criminal behavior and facilitates the development of appropriate preventive measures.

Predictive analysis constitutes one of the most dynamic directions in the development of contemporary criminology. It employs mathematical models, statistical algorithms, and machine-learning techniques to estimate the probability of future criminal events. Its primary objective is not the exact prediction of human behavior but rather the identification of risks and trends that may contribute to crime prevention and to the optimization of decision-making processes [6, p. 14].

Finally, prescriptive analysis represents the most advanced form of data analysis. It goes beyond the forecasting stage and provides recommendations regarding the measures that should be adopted to achieve specific objectives. In criminology, prescriptive analysis may be used to evaluate various intervention scenarios and identify the most effective strategies for crime prevention and control [7].

These forms of analysis do not operate in isolation but rather complement one another within a complex process of research and evaluation. Together, they make it possible to move from the simple description of crime to the anticipation and effective management of criminogenic risks.

1.3. Big Data and Contemporary Criminology

The exponential growth in the volume of information generated within the digital society has facilitated the emergence of the concept of Big Data, which has become one of the most important research topics in contemporary criminology. The concept refers to the set of technologies and methods used for the collection, processing, and analysis of extremely large volumes of data characterized by high diversity and rapid rates of generation.

In the specialized literature, Big Data is commonly described through the model of five fundamental characteristics: volume, velocity, variety, veracity, and value. These characteristics demonstrate that modern data analysis is not limited to the quantity of available information but also involves assessing its quality, relevance, and usefulness for decision-making processes [8, pp. 15-2].

The application of the Big Data concept in criminology allows for the simultaneous integration of highly diverse information sources, including police databases, video footage, geolocation data, social media activities, economic information, and data generated by urban digital infrastructures. This capacity for integration contributes to the development of analytical models that are far more complex and accurate than those used in the past.

A major advantage of Big Data lies in its ability to identify correlations and patterns that cannot be detected through traditional statistical methods. Researchers are thus able to analyze a very large number of variables simultaneously and reveal complex relationships between social, economic, and criminogenic factors that influence the evolution of crime.

At the same time, the use of Big Data raises numerous methodological, legal, and ethical concerns. These include the risk of excessive information collection, difficulties in verifying data quality, the protection of privacy, and the possibility of reproducing biases already present in the datasets used to train algorithms. For this reason, contemporary literature emphasizes the necessity of developing effective mechanisms for the control and oversight of technologies based on Big Data within the field of law enforcement [9, pp. 3-30].

From the perspective of the development of digital criminology, Big Data represents one of the fundamental resources for the formulation of evidence-based public policies and for strengthening the capacity of institutions to prevent and combat crime in a social environment undergoing continuous transformation.

II. Modern Data Analysis Tools Used in Crime Prevention and Crime Control.

2.1. Geographic Information Systems (GIS) and Geospatial Crime Analysis. One of the most significant methodological innovations introduced into criminology during recent decades has been the use of Geographic Information Systems (GIS) for analyzing the spatial distribution of crime. The development of these technologies has made it possible to overcome the limitations of traditional statistics and has provided opportunities to examine criminal phenomena from the perspective of the relationship between crime and the environment in which it occurs.

The theoretical foundations of geospatial analysis originate in urban ecology and the theories of social disorganization developed by representatives of the Chicago School. According to these approaches, the distribution of crime is not random but is influenced by the characteristics of the social and physical environment. Subsequent research demonstrated that certain urban areas consistently concentrate high levels of criminal activity, a phenomenon commonly referred to as crime hotspots [3, pp. 45-60].

Geospatial analysis enables the identification of such areas with elevated criminogenic risk through the correlation of information concerning crime locations with data related to urban infrastructure, population density, economic development, population mobility, and other relevant variables. Through digital mapping and crime-mapping techniques, law enforcement agencies can visualize the geographical distribution of criminal phenomena and identify spatial patterns associated with different categories of offences.

A major advantage of GIS lies in its capacity to integrate and graphically represent large volumes of information originating from various sources. Statistical data can thus be

combined with socioeconomic, demographic, and urban planning information, facilitating the development of complex models for criminogenic risk assessment. In this manner, geospatial analysis goes beyond the mere cartographic representation of crime and becomes an instrument of strategic and operational evaluation.

2.2. Artificial Intelligence and Predictive Analysis. The development of artificial intelligence has generated one of the most significant methodological transformations in contemporary criminology. Machine-learning algorithms and automated data-processing technologies enable the identification of complex patterns of criminal behavior and the development of forecasts concerning the evolution of criminal phenomena.

Predictive analysis represents the process through which historical data and statistical algorithms are used to estimate the probability of future events. In the field of criminology, this method seeks to identify areas, time periods, or circumstances in which there is a high probability that criminal offences will occur [10, pp. 100-108].

The operation of predictive systems is based on the analysis of large volumes of information concerning previously recorded crimes. Algorithms identify regularities and relationships among different variables and generate models capable of estimating the level of risk associated with particular situations. Unlike traditional approaches, these systems are able to process thousands of variables simultaneously and update their assessments in real time.

Among the best-known applications of predictive analysis are PredPol and HunchLab, systems employed in various jurisdictions to anticipate the spatial distribution of crime and optimize police operational activities [6, pp. 21-25].

Supporters of these technologies argue that they contribute to the more efficient use of available resources and enable preventive activities to be directed toward areas and situations characterized by high criminogenic risk. Furthermore, predictive systems provide opportunities to identify trends that cannot be detected through conventional analytical methods.

2.3. Criminal Network Analysis. The increasing complexity of organized crime has led to the development of analytical methods capable of moving beyond the traditional approach focused exclusively on the individual offender. In this context, social network analysis has become one of the most important methods used for investigating modern criminal structures [11, pp. 5-7].

The fundamental premise of this method is that organized criminal activities result from interactions among individuals, groups, and organizations that form complex networks of relationships. Network analysis seeks to identify central actors, communication channels, and the mechanisms through which criminal activities are coordinated.

Through the use of specialized algorithms and graphical representations, researchers can visualize the structure of a criminal network and identify individuals who exert influence over other members. This approach makes it possible to overcome the limitations of traditional analyses and provides a more realistic perspective on the functioning of criminal groups.

Network analysis is frequently used in investigations involving drug trafficking, economic crime, human trafficking, and organizations engaged in terrorist activities. In many cases, identifying key actors within the network allows authorities to disrupt the functioning of the entire criminal structure.

The importance of this method is further amplified by the transnational nature of contemporary crime. Under conditions of globalization and digitalization, criminal groups develop extensive networks operating simultaneously across several states, and the analysis of relationships among participants becomes essential for understanding the mech-

anisms governing their activities [12].

2.4. Open-Source Intelligence Analysis. The expansion of the Internet and the development of digital platforms have generated enormous quantities of publicly available information. In this context, Open-Source Intelligence (OSINT) has become an indispensable instrument of modern criminological analysis and criminal investigations [13, pp. 25-50].

OSINT represents the process of collecting, verifying, and analyzing information derived from publicly accessible sources, including websites, social networks, public registries, open databases, media publications, and other digital resources. Unlike traditional intelligence-gathering methods, OSINT utilizes data that are legally available and can be obtained without the use of intrusive measures.

The importance of OSINT is particularly evident in the investigation of cybercrime, online fraud, violent extremism, and radicalization processes. The analysis of information published within the digital environment enables the identification of connections among individuals, organizations, and events, thereby facilitating the early detection of threats to public security [14].

III. International Practices Regarding the Use of Data Analysis in Crime Prevention and Crime Control. 3.1. The Experience of the United States of America. The United States of America is considered one of the pioneers in the use of data analysis within law enforcement activities. The development of modern systems of criminological analysis has been driven both by the scale of criminal phenomena and by the necessity of utilizing institutional resources efficiently in a context characterized by social and geographical diversity.

A landmark moment in this process was the implementation of the COMPSTAT (Computerized Statistics) system, developed within the New York Police Department during the 1990s. This system introduced an innovative management model based on the systematic analysis of crime data and the continuous evaluation of the performance of operational units. Through the use of updated information and geospatial analyses, COMPSTAT enabled the rapid identification of criminal trends and the adoption of operational measures tailored to existing circumstances [15, pp. 97-125].

A subsequent stage was represented by the development of predictive policing systems. Beginning in the 2000s, several police departments implemented instruments based on statistical algorithms and mathematical models capable of estimating the probability of crimes occurring within specific geographical areas and time intervals. Among the most well-known examples are PredPol and HunchLab, which utilize historical crime data to identify areas characterized by elevated criminogenic risk.

In recent years, U.S. law enforcement agencies have increasingly employed artificial intelligence, criminal network analysis, and similar instruments to prevent and combat cybercrime, financial fraud, and transnational organized crime. This evolution confirms the orientation of the American system toward security models based on the intensive use of data and the integration of digital technologies into operational and strategic processes.

3.2. The Experience of the United Kingdom. The United Kingdom represents one of the most relevant European examples regarding the integration of data analysis into policing activities and the process of developing public security policies. The development of this field is closely linked to the promotion of the concept of intelligence-led policing, which emphasizes the use of information and criminological analyses as the foundation of operational and strategic activities.

The British model assigns a central role to the process of collecting, evaluating, and

analyzing information related to criminality. In this context, the National Intelligence Model (NIM) has become the principal methodological framework used to coordinate analytical activities and support decision-making processes within police services [1, pp. 27-45].

A distinctive feature of the British experience is the emphasis placed on evidence-based criminology and on the continuous evaluation of the effectiveness of implemented measures. Law enforcement institutions systematically employ statistical analyses, impact assessments, and empirical research in order to identify the most effective crime prevention strategies.

Over the last decade, British authorities have invested significantly in the development of predictive analytical tools and in the use of artificial intelligence technologies. These instruments are used to identify individuals with heightened vulnerability to victimization, assess risks associated with domestic violence, and combat cybercrime.

At the same time, the authorities have developed complex oversight and auditing mechanisms designed to ensure compliance with the principles of legality and the protection of fundamental human rights.

3.3. The Experience of Germany. In Germany, the development of data analysis tools in the field of public security has been influenced by the need to combat organized crime, terrorism, and threats generated by cybercrime. Unlike the American model, which is characterized by a strong orientation toward predictive analysis, the German approach is distinguished by a pronounced emphasis on the protection of fundamental rights and on legal oversight of the use of digital technologies.

German authorities employ sophisticated information-analysis systems to identify risks associated with serious and organized crime. In recent years, several federal states (*Länder*) have implemented platforms based on artificial intelligence and predictive analysis, including the PRECOBS (Pre-Crime Observation System), designed to identify risks related to property crimes [6, pp. 21-33].

The use of these instruments has nevertheless generated intense debates concerning their compatibility with constitutional principles and personal data protection regulations. The influence of German constitutional jurisprudence and European standards regarding privacy protection has led to the development of strict mechanisms for the control and accountability of institutions utilizing data-analysis technologies.

The German experience highlights the importance of achieving a balance between the need to ensure public security and the obligation to respect the fundamental rights of individuals. From this perspective, the German model is frequently cited in the specialized literature as an example of integrating technological innovation within a rigorous legal framework.

3.4. The Experience of the Netherlands

The Netherlands is regarded as one of the most innovative European states in the field of using analytical technologies for crime prevention and control. The strategies implemented by Dutch authorities are characterized by an advanced integration of data analysis, artificial intelligence, and interinstitutional cooperation.

A relevant example is the use of predictive analysis systems for identifying financial fraud, economic crime, and other forms of criminality that significantly affect public interests. Dutch authorities have developed sophisticated mechanisms for integrating data derived from administrative, fiscal, and judicial sources with the aim of identifying risks and optimizing control activities.

At the same time, the Dutch experience also provides important examples concerning the limitations of data analysis. A case extensively discussed in legal and criminological literature is the SyRI (System Risk Indication) system, which was used to identify risks

of social welfare fraud. The decision of Dutch courts to restrict the use of this system highlighted the importance of respecting the principles of transparency, proportionality, and privacy protection in the implementation of predictive technologies.

Currently, the Netherlands promotes an approach based on the concept of responsible AI, which seeks to capitalize on the advantages offered by data analysis without compromising fundamental rights and freedoms. This orientation is consistent with broader European trends aimed at developing artificial intelligence governance models grounded in accountability and democratic oversight.

IV. Future Perspectives on the Implementation of Data Analysis in Law Enforcement Institutions of the Republic of Moldova. In recent years, the Republic of Moldova has recorded significant progress in the process of public administration digitalization and the development of information infrastructure. The implementation of electronic registries, the expansion of digital governmental platforms, and the strengthening of institutional interoperability mechanisms have created favorable conditions for the development of modern data analysis systems and for their utilization within law enforcement activities.

A particularly important role in this process belongs to the Ministry of Internal Affairs of the Republic of Moldova and its subordinate structures, which manage substantial volumes of information concerning crime, public order, and citizens' safety. The effective utilization of these data can contribute to improving the capacity to identify criminogenic risks, optimize operational activities, and support evidence-based public policies.

At present, criminological analysis conducted within law enforcement institutions is predominantly oriented toward the statistical assessment of criminal phenomena and the preparation of reports concerning the evolution of major crime indicators. Although such activities are indispensable for decision-making processes, international experiences demonstrate that the effectiveness of crime prevention and control can be significantly enhanced through the use of more advanced analytical instruments based on the integration and automated processing of large volumes of data.

A priority direction for development consists in strengthening the interoperability of information systems utilized by different public institutions. Given that information relevant to criminological analysis is dispersed across multiple administrative, judicial, and operational databases, the creation of efficient mechanisms for data exchange and integration represents an essential prerequisite for developing modern analytical capacities. The experience of European states demonstrates that database interoperability contributes to the faster identification of connections among different criminal phenomena and facilitates the adoption of effective preventive measures.

Another strategic direction concerns the development of geospatial crime analysis. The implementation of GIS technologies within policing activities would make it possible to identify areas characterized by elevated criminogenic risk, assess the territorial distribution of various categories of offences, and optimize the planning of operational activities. In the context of urbanization and increasing population mobility, such instruments can contribute to a more efficient use of available resources and enhance the responsiveness of institutions responsible for maintaining public order.

Looking ahead, considerable potential also exists in the use of artificial intelligence technologies and predictive models. Although the implementation of such systems requires substantial investments and the development of an appropriate regulatory framework, international experience demonstrates that they can facilitate the identification of criminal trends and the assessment of risks associated with different forms of criminality. At the same time, the use of such instruments must be accompanied by clear legal safeguards concerning the protection of personal data, algorithmic transparency, and respect

for fundamental human rights.

The success of the modernization process, however, depends not only on the existence of technological infrastructure but also on the development of human capital. In this regard, one of the principal challenges facing the Republic of Moldova is the training of a new generation of specialists capable of combining criminological knowledge with competencies in data analysis, statistics, information technology, and artificial intelligence. In specialized literature, this professional category is frequently associated with the concept of the "criminological analyst", a role that is becoming increasingly important within modern law enforcement institutions.

Furthermore, the development of data analysis capacities must be accompanied by strengthened international cooperation. The participation of the Republic of Moldova in joint projects with organizations such as Europol, CEPOL, and INTERPOL can facilitate the transfer of expertise, access to best practices, and the development of modern mechanisms for information exchange concerning transnational crime.

In conclusion, data analysis represents not merely a technological innovation but a profound transformation of contemporary criminological paradigms. In the context of the expansion of the digital society and the increasing complexity of criminal phenomena, the capacity to transform data into relevant knowledge becomes one of the essential strategic resources for ensuring public security and for developing effective, sustainable, and future-oriented criminological policies.

Bibliographical references

1. Ratcliffe J.H. Intelligence-Led Policing. 2nd Edition. New York: Routledge, 2016.
2. Boba Santos R. Crime Analysis with Crime Mapping. 5th Edition. Thousand Oaks: Sage Publications, 2021.
3. Clarke R.V., Eck J.E. Become a Problem-Solving Crime Analyst. London: Jill Dando Institute of Crime Science, 2005.
4. McCue Colleen. Data Mining and Predictive Analysis: Intelligence Gathering and Crime Analysis. 2nd Edition. Butterworth-Heinemann, 2015.
5. Brayne S. Predict and Surveil: Data, Discretion and the Future of Policing. Oxford: Oxford University Press, 2020.
6. Perry W.L., McInnis B., Price C.C., Smith S.C., Hollywood J.S. Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations. Santa Monica: RAND Corporation, 2013.
7. Meijer A., Wessels M. Predictive Policing: Review of Benefits and Drawbacks. International Journal of Public Administration, 2019, Vol. 42.
8. Kitchin R. The Data Revolution: Power, Data and Knowledge. 3rd Edition. London: Sage Publications, 2021.
9. O'Neil C. Weapons of Math Destruction. New York: Crown Publishing Group, 2016.
10. Mohler G.O., Short M.B., Brantingham P.J., Schoenberg F.P., Tita G.E. Self-Exciting Point Process Modeling of Crime. Journal of the American Statistical Association. 2011, Vol. 106, No. 493.
11. Morselli C. Inside Criminal Networks. New York: Springer, 2009.
12. Europol. European Serious and Organised Crime Threat Assessment (SOCTA 2025).
13. Casey E. Digital Evidence and Computer Crime. 4th Edition. Academic Press, 2020.
14. Europol. Internet Organised Crime Threat Assessment (IOCTA 2024).
15. Silverman E.B. NYPD Battles Crime: Innovative Strategies in Policing. Boston: Northeastern University Press, 1999.

CZU 343.1:339.543:656.8 **DOI: https://doi.org/10.5281/zenodo.20813536**

NATIONAL AND INTERNATIONAL LEGAL PARTICULARITIES OF THE CRIMINAL INVESTIGATION OF CUSTOMS OFFENCES COMMITTED THROUGH POSTAL SHIPMENTS

Albert ANTOCI,
PhD, Associate Professor,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
ORCID: 0000-0001-6304-2046

Alexandru-Stelian SPÎNU,
PhD Student,
University of European Studies of Moldova (USEM)
ORCID: 0009-0005-8151-7320

Abstract
This paper provides a comprehensive analysis of the procedural and criminal aspects concerning the investigation of customs-related offences committed through postal consignments. It emphasises how the use of postal and international courier infrastructures facilitates the diversification and evolution of smuggling practices, allowing offenders to operate at increasingly sophisticated levels.
The study further outlines the procedural framework regulating the investigation, evidence collection, and documentation of customs offences perpetrated via postal shipments, while addressing the balance between enforcement measures and the protection of fundamental rights under domestic and international law.
Keywords: smuggling, customs-related offences, postal consignments, customs control, global logistics, fundamental rights, criminal procedure.

PARTICULARITĂȚI LEGISLATIVE NAȚIONALE ȘI INTERNAȚIONALE ALE INVESTIGĂRII PROCESUAL-PENALE A INFRACȚIUNILOR VAMALE COMISE PRIN INTERMEDIUL TRIMITERILOR POȘTALE

Abstract
În acest articol este efectuată și prezentată o analiză generală al procesului de investiagre a infracțiunilor vamale ce sunt comise prin intermediul trimiterilor poștale. Este evidențiat modul în care utilizarea infrastructurilor poștale și a serviciilor internaționale de curierat facilitează diversificarea și evoluția practicilor de contrabandă, permițând autorilor să acționeze la niveluri tot mai sofisticate.
Studiul conturează, totodată, cadrul procesual care reglementează activitățile de investigare, administrare a probelor și documentare a infracțiunilor vamale săvârșite prin trimiteri poștale, abordând în același timp echilibrul necesar între măsurile de aplicare a legii și protecția drepturilor fundamentale, atât în dreptul intern, cât și în dreptul internațional.
Cuvinte-cheie: contrabandă, infracțiuni vamale, trimiteri poștale, control vamal, logistică globală, drepturi fundamentale, proces penal.

Introduction. In the context of the accelerated development of trade and the expansion of global courier networks, the risk of customs offences being committed through postal shipments has increased considerably. These offences fall within the sphere of cross-border criminality and have significant consequences not only for the economic

security of the state but also for the international legal order. Through postal and courier networks, criminal groups resort to sophisticated mechanisms for concealing prohibited goods or goods subject to customs duties such as excisable products, narcotic substances, counterfeit goods, or items subject to restriction regimes. In this way, the form of committing offences through postal shipments has taken shape, adapted to new technological and logistical realities, which transform legitimate infrastructures into instruments of unlawful activity.

Research methodology is based on the use of classical legal-scientific analysis methods, including logical and grammatical analysis, synthesis, deduction and induction, observation, and comparison. Following examination of relevant materials encompassing national and international normative acts, specialist doctrine, court jurisprudence, and other related sources corresponding conclusions and recommendations were formulated, designed to reflect the research findings and the proposed directions.

Discussion and results applied. In the context of contemporary globalisation, national borders have lost their traditional rigidity, economic and commercial barriers have been largely abolished, and the circulation of information now occurs with unprecedented speed through a simple technological gesture. This opening of markets and the free movement of goods and persons, although generating considerable economic benefits, simultaneously creates fertile ground for the proliferation of criminal phenomena.

As Pino Arlacchi, former Executive Director of the United Nations Office for Drug Control and Crime Prevention, stated at the tenth UN Congress on the Prevention of Crime and the Treatment of Offenders: "*there have never been so many economic opportunities for so many people, but, equally, there have never been so many ways for criminal organisations to exploit the system in their own interest*" [1].

Law No.39/2016 of the Republic of Moldova defines a *postal item* as: "*an item bearing an address to which it is to be delivered by the postal service provider. This category includes correspondence items, as well as printed matter (books, catalogues, newspapers, periodicals) and postal parcels containing goods with or without commercial value*", and an *international postal item* as: "*a postal item dispatched from the territory of the Republic of Moldova to an address not located on its territory, or dispatched from outside the Republic of Moldova to an address located on its territory*" [2].

The second paragraph of the above-cited law prohibits the inclusion in all categories of postal items of the following objects:

"(a) Narcotic drugs and psychotropic substances, as defined by the International Narcotics Control Board (INCB);

(b) Obscene or immoral objects;

(c) Counterfeit and pirated objects;

(d) Other import or circulation objects that are prohibited in the country of destination;

(e) Objects which, by their nature or packaging, may present a danger to agents or the general public, or which may stain or damage other postal items, postal equipment or property belonging to third parties;

(f) Documents bearing the character of current and personal correspondence exchanged between persons other than the sender and the addressee or persons residing with them;

(g) Hazardous goods;

(h) Explosive devices and inert military equipment, including inert grenades, inert shells and other analogous items, as well as imitations of such devices and items;

(i) Live animals" [2].

Emergency Ordinance No.13/2013 of Romania contains the definition of a postal item, identified as: "*an addressed item in the final form in which it is to be transported and delivered to the address indicated by the sender. In addition to correspondence items, this category includes, for example, books, catalogues, newspapers, periodicals, postal parcels containing goods with or without commercial value, and paper-based postal money orders*", using the terms: "*international postal item a postal item dispatched from the territory of Romania to an address not located on that territory, or dispatched from outside the territory of Romania to an address located on that territory, and a postal item dispatched from outside the territory of Romania to an address not located on that territory, but in transit through the territory of Romania*", and "*intra-Community postal item an international postal item dispatched from the territory of Romania to an address on the territory of another Member State of the European Union, or dispatched from an address on the territory of another Member State of the EU to an address on the territory of Romania, and a postal item dispatched from the territory of one Member State of the European Union to an address on the territory of another Member State of the European Union, but in transit through the territory of Romania*"[3].

That act expressly stipulates that: "*The following acts constitute contraventions, unless committed under such conditions as to constitute, according to criminal law, offences: (c) postal items consisting of goods whose transport is prohibited by legal provisions, even if only over a portion of the route*" [3].

The basis for including these provisions was Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997, which establishes common rules for the development of the internal market of postal services and the improvement of the quality thereof, subsequently amended by Directive 2002/39/EC of 10 June 2002, intended to consolidate the gradual opening of the postal sector to competition, bearing in mind that this regulation was subsequently revised by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 [4], which aims at completing the liberalisation of the postal services market in the European Union.

Under European Union law, the offence of smuggling is analysed primarily through the lens of the protection of the Union's financial interests (the so-called *PIF: Protection des Intérêts Financiers*), regulated by:

• The PIF Convention of 26 July 1995 and Directive (EU) 2017/1371 [5] on the fight against fraud to the Union's financial interests by means of criminal law;

• The Union Customs Code (Regulation (EU) No. 952/2013) [6], which establishes customs declaration obligations and the legal regime for goods introduced into or removed from the customs territory of the Union;

• Directive 2008/6/EC [7] on the complete liberalisation of the postal services market, which introduces the obligation for Member States to guarantee the security of international postal flows and cooperation with customs authorities.

The European Union is the world's largest importer and exporter of goods, managing an internal market of almost 500 million inhabitants. Customs legislation is fully harmonised and provides a stable and comprehensive legal system aimed at ensuring the correct and uniform application of the Union's autonomous and international rules, and establishing the obligations and rights of customs administrations and economic operators in a common and transparent manner [8].

In 1990, the World Trade Organization developed a set of release procedures designed to accelerate the clearance of low – or negligible-value goods at the border, which were transported primarily by courier services and express mail [9].

At that time, the guidelines operated on the principle of information provided by the operator to customs authorities prior to the arrival of goods. The guidelines were revised

in 2014 to reflect revisions made to the Kyoto Convention and a number of other developments, and again in 2018 [10].

The need had already emerged for customs to assume greater and broader responsibilities in areas such as security, trade fraud, illicit trafficking in drugs and weapons, money laundering, cybercrime, smuggling, environmental crime, and transnational organised crime.

The accelerating pace of digital transformation of economies and businesses – where information technology, mobile technology, the Internet, and electronic payment systems have transformed the way businesses and consumers buy and sell goods – has further compounded this challenge.

Postal authorities, on the other hand, generally accept customs declarations in paper form, which makes electronic and advance information impractical.

The postal situation is acknowledged in the guidelines, which specifically indicate that postal shipments for which information is provided in a non-electronic format and is supplied after arrival should nonetheless benefit from prompt, if not immediate, release. The need to develop more advanced mechanisms has, however, been emphasised. At the same time, the wealth of information available to e-commerce operators is recognised and continued cooperation is recommended.

According to international protocols, most private postal services have standard logistics which offenders intentionally exploit to their advantage. When a postal package begins its journey from the originating post office, it passes through a physical screening process, as shown in Fig. 1. There is little or no authentication involved in subsequent stages. Depending on the destination, the package is sent to a sectional distribution centre for local distribution or from there to the national distribution centre for interstate deliveries.

Most transfers are made by road using trucks, with the exception of postal items and express deliveries. A similar situation occurs in imports and exports, where the large volume of goods does not permit authentication.

Although packages are tracked throughout the entire process, the contents are not checked for counterfeits, adulterated substances, or illegal items, except for the physical check at origin. In order to achieve a more advanced level of surveillance of the postal parcel dispatch process, the following action model is proposed, which would facilitate the possibility of identifying possible manipulations in the postal lifecycle when packages are transferred between the sectional distribution centre, the national distribution centre, consolidation facilities, and import/export terminals, including for the purpose of identifying possible prohibited objects or substances that may be contained in the postal item [11].

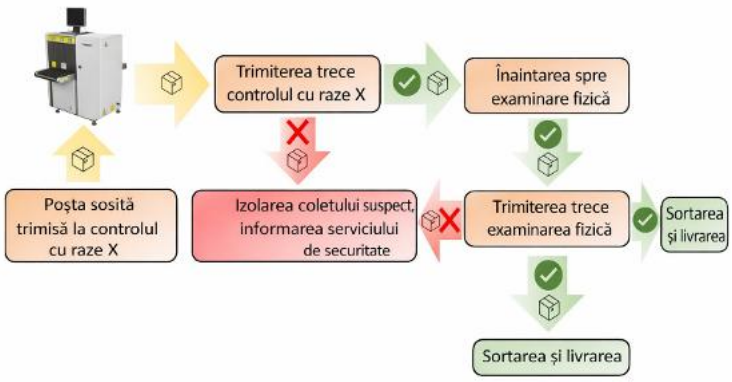


Fig. 1. The current filtering process followed by most postal services, which does not rely on any quantitative information.

Fig. 2. The lifecycle of mail from origin to destination, which may proceed through different modes

Pursuant to Article 30 of the Constitution of the Republic of Moldova [12], the state guarantees the inviolability of the secrecy of correspondence, regardless of its form letters, telegrams, postal items, telephone conversations, or other lawful means of communication. This constitutional guarantee reflects the commitment of the authorities to protect the sphere of private life and to prevent any arbitrary interference with persons' communications. In this regard, the criminal procedure legislation of the Republic of Moldova enshrines the same principle of the inviolability of correspondence. According to Article 14(1) of the Code of Criminal Procedure, the state guarantees: "*The right to the secrecy of letters, telegrams, other postal items, telephone conversations and other lawful means of communication is guaranteed by the state. In the course of criminal proceedings, no one may be deprived of or restricted in this right*" [13].

However, the right to the secrecy of correspondence does not have an absolute character, but rather a relative one, and may be restricted under certain conditions expressly provided by law. In accordance with the provisions of Article 138[1] of the Code of Criminal Procedure of the Republic of Moldova [13], the restriction of this right is permissible only where such a measure is necessary for the protection of national security, the economic well-being of the state, public order, or for the purpose of preventing and combating offences.

Moreover, the protection of the secrecy of correspondence is also enshrined in Article 8 of the European Convention on Human Rights, which guarantees every person the right to respect for their correspondence. Nevertheless, the European provision permits the interference of authorities in the exercise of this right where the measure is provided for by law, pursues a legitimate aim, and constitutes a necessity in a democratic society in particular for the protection of national security, public safety, public order, and the prevention of criminal acts, as well as for the protection of the rights and freedoms of others.

Reference has been made to these provisions with the purpose of noting that both national legislation and European Union legislation guarantee the inviolability of the secrecy of correspondence, which includes postal items, while providing that this right is not absolute, given that in cases where the presence of an offence is established by the competent authorities, it may be restricted in order to conduct an investigation aimed at countering the unlawful act, identifying the perpetrators, and sanctioning them within the limits of their culpability.

From a legal perspective, customs offences committed through postal shipments

fall within the category of acts aimed at evading customs control and avoiding payment of the fiscal obligations associated with goods introduced into the country. Under the criminal law of the Republic of Moldova, these are most commonly classified generally as smuggling offences.

Unlike classic smuggling, which involves the unauthorised physical crossing of a border, postal customs offences manifest through the use of a lawful transport channel (the postal service) for the purpose of concealing the illicit nature of the dispatched goods.

These may take the form of:

– The introduction into the territory of the state of goods without customs declaration;

– Undervaluation of the declared goods;

– Falsification of documents accompanying parcels;

– Dispatch by post of goods subject to import/export prohibitions.

It is evident that the use of postal networks for illicit activities marks a shift of smuggling from the physical space to the logistical and electronic domain. Although the modalities have modernised, the essence of the act the evasion of customs control remains the same.

This evolution necessitates the adaptation of legislation to reflect the reality of digital commercial operations and to enable the effective identification and sanctioning of perpetrators. Simultaneously, this fact underscores the need to implement, in both the criminal procedure and customs legislation at national level and that of the European Union provisions expressly regulating the procedural actions undertaken for the investigation and documentation of offences committed through postal shipments.

At present, for the investigation of customs offences committed through postal shipments, where information exists indicating the presence of a prohibited item in the postal shipment, procedurally both special investigative measures and procedural measures are carried out, including: the retention, examination, delivery, search, or seizure of postal items belonging to persons implicated in the case.

Postal units retain postal items containing objects, materials, and substances prohibited from dispatch at the location where these are detected.

Items containing prohibited objects are in no case dispatched to their destination, delivered to addressees, or returned to their origin. If prohibited objects are discovered in items in transit, the latter will be retained and processed by the universal postal service provider in accordance with legislation. When prohibited objects are identified at the time of transport, the universal postal service provider is authorised to extract these objects from the item and to process them in accordance with legislation, while the remainder of the item is dispatched to its destination, accompanied by information regarding the removal of the inadmissible object.

Regarding the detection and retention of such postal items, postal service providers notify the competent law enforcement authorities. Officials of the competent state authority carry out, in the presence of the head of the postal unit, the confiscation of prohibited objects and substances in accordance with the provisions of the normative framework of the Republic of Moldova [14].

The provisional storage of such postal items is carried out at post offices, with the maintenance of records and the preservation of their integrity. Access by unauthorised persons to these items is excluded.

Consequently, once a postal item arrives at the post office, it is temporarily withdrawn from circulation; the head of the postal institution is obliged to immediately notify the criminal investigation body which presented the ordinance, confirming the retention of the postal items indicated in the authorisation act.

The concept of "*retention of a postal item*" is understood as the procedural action carried out by the head of the post office, on the basis of a ruling by the investigating judge authorising this special investigative measure. It consists of the suspension, at the level of the postal institution, of correspondence dispatched or received by persons who are suspects or accused, where there are reasonable grounds to believe that the respective items may contain information or objects with evidentiary value in a criminal case concerning one or more serious, particularly serious, or exceptionally serious offences [15, pp. 104-105].

Thus, the retention of postal items constitutes an exceptional procedural measure, designed to obtain relevant evidence in complex cases, being subject to judicial authorisation and to the review of legality exercised by the investigating judge, in order to guarantee respect for the right to private life and the secrecy of correspondence as provided by law and by the European Convention on Human Rights.

Conclusions. We conclude that the phenomenon of customs offences committed through postal items highlights a transformation of classic smuggling, adapted to the economic, logistical, and technological realities of the digital age. The use of postal channels lawful transport mechanisms for the dispatch of prohibited goods or goods subject to customs duties constitutes a modern form of evasion of state control, characterised by concealment, fragmentation of shipments, and the use of advanced means of communication.

The existing normative framework, although coherent at national and European level, requires uniform application adapted to the new operational realities. The legislation of the Republic of Moldova, Romania, and the European Union clearly establishes the legal regime of postal items and the applicable prohibitions; however, the practical effectiveness of these norms depends on the degree of cooperation between customs authorities, criminal investigation bodies, and postal operators.

An essential element is ensuring the balance between the efficiency of criminal investigation and the protection of the fundamental rights of the person. Constitutional and conventional guarantees regarding the secrecy of correspondence and the right to private life require that measures which by their very nature affect the general principles of criminal procedure such as the retention, opening, seizure, or search of postal items be ordered exclusively under the conditions strictly provided by law, with prior judicial authorisation and justification proportionate to the objective pursued. Accordingly, the „retention of a postal item" must be regarded as an exceptional procedural measure, subordinate to the principle of legality and subject to rigorous judicial review, in order to prevent the abuse of power and to guarantee compliance with the standards set out in Article 8 of the European Convention on Human Rights.

In procedural terms, it is necessary to consolidate the chain of custody of evidence obtained, to clarify the terminology of procedural acts, and to supplement the legal framework with precise concepts regarding the seizure of prohibited objects and the concurrent application of contravention or criminal procedure legislation. Postal operators, as technical participants in the criminal process, must possess clear internal procedures regarding the identification, reporting, and storage of suspicious items, in full accordance with criminal procedure norms.

Therefore, only a unitary legal-procedural approach, founded on the principles of legality, proportionality, and international cooperation, can guarantee the effectiveness of criminal investigations and the equitable protection of fundamental rights in this new form of cross-border economic criminality.

Bibliographical references

1. United Nations Office on Drugs and Crime. Available: https://www.unodc.org/un-

odc/en/about-unodc/speeches/speech_2000-06-26_1.html (accessed 03.11.2025).
2. Law of the Republic of Moldova No.36 of 17 March 2016 on Postal Communications. Published: 29 April 2016. In: Official Gazette No.114-122, Art. 225.
3. Government of Romania. Emergency Ordinance No.13/2013 on Postal Services. In: Official Gazette, Part I, No.139 of 15 March 2013, Art. 2, points 13-15. Available: https://lege5.ro/App/Document/gm2doojzge/ordonanta-de-urgenta-nr-13-2013-privind-serviciile-postale (accessed 06.11.2025).
4. Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community Postal Services. OJ L 52, of 27.02.2008, pp.3-20. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0006 (accessed 27.10.2025).
5. Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the Fight against Fraud to the Union's Financial Interests by Means of Criminal Law. OJ L 198, of 28.7.2017, pp.29-41. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017L1371 (accessed 27.10.2025).
6. Regulation (EU) No.952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast). OJ L 269, of 10.10.2013, pp.1-101. Available: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex-:32013R0952 (accessed 27.10.2025).
7. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on Common Rules for the Development of the Internal Market of Community Postal Services and the Improvement of Quality of Service. OJ L 15, of 21.01.1998, pp.14-25.
8. Commission Staff Working Document: Impact Assessment Accompanying the Proposal for a Directive of the European Parliament and of the Council on the Union Legal Framework for Customs Infringements and Sanctions, SWD/2013/0514 final. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX-:52013SC0514 (accessed 20.10.2025).
9. World Trade Organization. Available:www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/immediate-releaseguidelines.aspx (accessed 20.03.2026).
10. Guidelines for the Immediate Release of Consignments by Customs. World Customs Organization, 2018. Available: https://www.wcoomd.org/en/about-us.aspx (accessed 20.03.2026).
11. Kelsey Horace-Herron, Naren Vikram Raj Masna, Peyman Dehghanzadeh, Soumyajit Mandal. Non-invasive Authentication of Mail Packages using Nuclear Quadrupole Resonance Spectroscopy. October 2022. Available: https://www.researchgate.net/publication/365106825 (accessed 20.03.2026).
12. Constitution of the Republic of Moldova, adopted on 29 July 1994. In: Official Gazette of the Republic of Moldova, No.1, 12 August 1994 (in force since 27 August 1994).
13. Code of Criminal Procedure of the Republic of Moldova No.122 of 14 March 2003. Published: 05 November 2013. In: Official Gazette No.248-251, Art. 699.
14. Government Decision of the Republic of Moldova No.1457 of 30 December 2016 approving the Rules on the provision of Postal Services. Published: 27 January 2017. In: Official Gazette No.24-29, Art. 46, pt. 45.
15. PILAT S. The Relationship between the Retention, Examination, Delivery, Search, or Seizure of Postal Items as a Special Investigative Measure and Other Evidentiary Procedures. pp. 104-105. In: Proceedings of the National Scientific Conference of 10 November 2022 — Current Issues Regarding the Observance of Human Rights in Criminal Proceedings and Special Investigative Activities. Chișinău, 2024.

UDC 343.98 **DOI: https://doi.org/10.5281/zenodo.20813661**

CAPABILITIES OF FINGERPRINT AND TRACEOLOGICAL EXAMINATIONS AND PARTICULARITIES OF THEIR APPOINTMENT IN THE INVESTIGATION OF PROFIT-MOTIVATED CRIMINAL OFFENSES COMMITTED UNDER MARTIAL LAW IN UKRAINE

Volodymyr KOVALENKO,
PhD Candidate, University Professor,
Senior Researcher, Research Laboratory
on the Problems of Forensic Support and Forensic Expertology,
Educational and Scientific Expert-Criminalistic Institute,
National Academy of Internal Affairs, Kyiv, Ukraine
ORCID: 0000-0001-5310-2092

Abstract

The article is devoted to highlighting the capabilities of forensic dactyloscopic and traceological examinations and the specific features of their appointment during the investigation of profit-motivated criminal offenses committed under the conditions of the legal regime of martial law in Ukraine.

It is noted that, given the difficulties in conducting certain investigative (search) actions due to the constant shelling of the territory of Ukraine by the aggressor state, a significant role in establishing circumstances relevant to criminal proceedings is assigned to forensic examinations.

It has been established that forensic dactyloscopic and traceological examinations play a significant role in determining the circumstances of such profit-motivated criminal offenses committed under the conditions of the legal regime of martial law as: theft (Part 4 of Article 185 of the Criminal Code of Ukraine); robbery; violent robbery; extortion; fraud; violent unlawful taking of a vehicle for profit-motivated purposes; unlawful deprivation of liberty or abduction; intentional homicide committed for profit-motivated reasons; and intentional homicide committed by order.

Their results depend on the quality of the materials provided to the experts and on the correctness of the formulation of the questions submitted for expert examination. The article presents typical circumstances that may be established with their assistance, the materials that should be submitted to experts and lists of typical questions posed for resolution by these examinations.

The conduct of forensic traceological examinations using 3D models of objects is considered promising. It is emphasized that, for the purpose of such examinations, experts may be provided with a digital 3D model of a volumetric trace produced by laser 3D scanning and a 3D model of the probable trace-forming object, or the object itself in its physical form.

Keywords: profit-motivated criminal offense, pre-trial investigation, criminal proceedings, forensic dactyloscopic examination, forensic traceological examination, objects of examination, expert.

CAPABILITĂȚILE EXPERTIZELOR DACTILOSCOPICE ȘI TRASEOLOGICE ȘI PARTICULARITĂȚILE DISPUNERII ACESTORA ÎN INVESTIGAREA INFRACȚIUNILOR CU SCOP DE PROFIT COMISE ÎN CONDIȚII DE LEGE MARȚIALĂ ÎN UCRAINA

Abstract

Articolul este dedicat evidențierii capacităților expertizelor criminalistice dactiloscopice și traseologice, precum și particularităților desemnării acestora în cadrul investigării infracțiunilor cu scop de profit săvârșite în condițiile regimului juridic al legii marțiale în Ucraina.

Se menționează că, având în vedere dificultățile întâmpinate în efectuarea anumitor acțiuni de urmărire penală (investigative și de căutare) cauzate de bombardamentele constante asupra teritoriului Ucrainei de către statul agresor, un rol semnificativ în stabilirea circumstanțelor relevante pentru procesul penal revine expertizelor criminalistice.

S-a stabilit că expertizele dactiloscopice și traseologice au o importanță deosebită în determinarea circumstanțelor unor infracțiuni cu scop de profit comise în condițiile legii marțiale, precum: furtul, tâlhăria, tâlhăria calificată, extorcarea, frauda, luarea ilegală a unui vehicul în scop de profit, privarea ilegală de libertate sau răpirea, omorul intenționat săvârșit din motive de profit și omorul intenționat săvârșit la comandă.

Rezultatele acestora depind de calitatea materialelor furnizate experților și de corectitudinea formulării întrebărilor adresate spre examinare. Articolul prezintă circumstanțele tipice care pot fi stabilite cu ajutorul acestor expertize, materialele ce trebuie înaintate experților, precum și exemple de întrebări standard utilizate în practica expertală.

Se consideră promițătoare efectuarea expertizelor traseologice prin utilizarea modelelor tridimensionale ale obiectelor. În acest sens, experților le pot fi furnizate modele digitale 3D ale urmelor volumetrice obținute prin scanare laser, precum și modele 3D ale obiectului presupus a fi format urma sau obiectul fizic propriu-zis.

Cuvinte-cheie: infracțiune cu scop de profit, investigație preliminară, procedură penală, expertiză dactiloscopică criminalistică, expertiză traseologică criminalistică, obiecte ale expertizei, expert.

Introduction. Immediately after the beginning of the full-scale invasion of Ukraine by the Russian Federation, martial law was introduced by the Presidential Decree of 24 March 2022 No.54/2022 and has since been regularly extended. At present, it remains in force until 4 May 2026. This legal regime provides for a number of restrictions on the constitutional rights and freedoms of citizens (including limitations on citizens' presence in public places during specified hours (curfew), enhanced control over the movement of individuals and vehicles, mobilization measures, etc.), which has led to a certain decrease in the commission of such profit-motivated criminal offenses as theft, robbery, and violent robbery. However, their number currently remains consistently high. At the same time, the number of fraud offenses has increased significantly, especially those committed in "remote forms," which is explained by the rapid digitalization of the population and the minimization of the need for offenders to physically move within populated areas.

Shortly after the introduction of the legal regime of martial law in Ukraine, amendments were made to the Criminal Code of Ukraine, according to which liability for such profit-motivated crimes as pillage (Article 432 of the Criminal Code of Ukraine) was strengthened. In addition, the legislative amendments modified the corpus delicti of such criminal offenses as theft (Part 4 of Article 185 of the Criminal Code of Ukraine); robbery (Part 4 of Article 186 of the Criminal Code of Ukraine); violent robbery (Part 4 of Article 187 of the Criminal Code of Ukraine); extortion (Part 4 of Article 189 of the Criminal Code of Ukraine); fraud (Part 3 of Article 190 of the Criminal Code of Ukraine); and misappropriation, embezzlement of property or its acquisition through abuse of office (Part 4 of Article 191 of the Criminal Code of Ukraine) [1]. The aforementioned criminal offenses were supplemented with a qualifying feature – commission using the conditions of martial law or a state of emergency, which entails more severe sanctions. It should be noted that national judicial practice has followed the path of applying this qualifying feature to virtually all thefts, robberies, violent robberies, extortions, and frauds committed during the period of the legal regime of martial law, regardless of the place and the specific circumstances of the act [2, p.283]. Despite considerable criticism of this policy in academic circles, this approach was ultimately upheld by the Supreme Court of Ukraine [3].

Given the difficulties in conducting certain investigative (search) actions due to the constant shelling of the territory of Ukraine by the aggressor state, a significant role in establishing circumstances relevant to criminal proceedings is assigned to forensic examinations.

Discussions and results obtained. As the study of judicial and investigative practice shows, within the same criminal proceedings concerning profit-motivated criminal offenses committed under the conditions of the legal regime of martial law, multiple forensic examinations are usually appointed. This is due to the large number of traces and physical evidence contained in the materials of criminal proceedings, as well as the specific nature of the circumstances that must be established during their pre-trial investigation.

Let us consider certain types of forensic examinations that are of the greatest importance for establishing the circumstances of the aforementioned criminal offenses.

A dactyloscopic examination is usually appointed during the investigation of such profit-motivated criminal offenses as theft; robbery; violent robbery; extortion; fraud; violent unlawful taking of a vehicle for profit-motivated purposes; unlawful deprivation of liberty or abduction; intentional homicide committed for profit-motivated reasons; and intentional homicide committed by order, etc., when fingerprints are detected on objects related to the event under investigation.

With its assistance, during the investigation of profit-motivated criminal offenses, the following circumstances may be established: the fact of a particular person's presence in a specific place and contact with certain objects (that is, establishing the possible role of each participant in the criminal offense); determining the number and personal composition of persons who participated in the commission of the criminal offense; establishing individual characteristics of the hands of the persons whose traces were detected at the scene, etc.

The expert should be provided with traces of papillary patterns collected at the scene (preferably seized together with the objects on which they are located or may be located), their copies on fingerprint lifting film, casts from three-dimensional traces or scale photographs of the traces, images of papillary patterns contained in the materials of previously conducted examinations, etc., as well as fingerprint cards of the persons being examined, prepared in accordance with Part 3 of Article 245 of the Criminal Procedure Code of Ukraine.

The following questions may be submitted for resolution by a dactyloscopic examination: Are there any fingerprints on the given object and, if so, are they suitable for personal identification? Were the fingerprints left by a specific person? (the full name of the person or persons whose fingerprint cards have been provided to the expert should be indicated).

If the person who likely left the traces at the scene of the criminal offense has not yet been identified, the following questions may be submitted for resolution by a dactyloscopic examination: Which hand and which fingers left the traces? What particular features characterize the hands of the person who left the traces (absence of fingers, presence of scars, dermatological skin conditions, etc., and which exactly)? Which areas of the palm surface left the traces? (This question is posed only in cases where palm prints have been recovered from the scene). As a result of what action was the trace left (grasping, touching, etc.)?

Answers to these questions make it possible to establish details of the mechanism of trace formation during the commission of the criminal offense, as well as to refute possible statements by the suspect claiming that the traces were left at the scene for reasons unrelated to the commission of the criminal offense.

Traceological examination. This type of examination is divided into several subtypes or varieties and is most often appointed during the investigation of such profit-motivated criminal offenses as theft (Part 4 of Article 185 CC of Ukraine); robbery (Parts 2 and 4 of Article 186 CC of Ukraine); violent robbery (Part 4 of Article 187 CC of Ukraine); extortion

(Part 4 of Article 189 CC of Ukraine); unlawful taking of a vehicle (for profit-motivated purposes – Part 1 of Article 289 CC of Ukraine); unlawful deprivation of liberty or abduction (Part 2 of Article 146 CC of Ukraine); intentional homicide committed for profit-motivated reasons (Clause 6, Part 2 of Article 115 CC of Ukraine) and intentional homicide committed by order (Clause 11, Part 2 of Article 115 CC of Ukraine), etc., depending on the objects available to the investigator.

Traceological examination of human foot and footwear traces. The main tasks of this examination are the identification of a person based on traces of bare feet, socks, or footwear, as well as the resolution of diagnostic tasks related to establishing the peculiarities of a person's movement, the size of footwear, etc. [4].

During the investigation of the aforementioned profit-motivated criminal offenses, a traceological examination may allow establishing the fact that several footwear traces were left by the same person (including those recovered from the scenes of different crimes), obtaining information about the characteristics of a person's gait, defects of the feet, determining the number of persons whose traces were left at the scene, which may indicate the group nature of the criminal offense, differentiating the "roles" of the participants in the criminal offense, and identifying the specific footwear worn by the person at the time of committing the criminally punishable act, etc. [5, p. 68].

When the object of examination is a cast or impression of a footwear trace, the expert, in addition to this trace, should be provided with the footwear seized from the suspect in accordance with Articles 160-168 of the Criminal Procedure Code of Ukraine. The footwear is submitted for examination in the condition in which it was discovered. If the investigator becomes aware that the footwear was used (worn) or repaired after the event and before its seizure, the expert must be informed of this circumstance.

In such a case, the following question is submitted for resolution by the examination: Was the footwear trace detected at the scene (or at several scenes) left by the footwear submitted for examination and seized from ... (full name)?

Traceological examination of vehicle traces. Vehicles may be used as means of transportation and/or for the carriage of goods during the commission of various profit-motivated criminal offenses. Moreover, the same vehicle may be used continuously – during the preparation, commission, and concealment of the crime – or only in particular stages (only for preparation, only during the commission of the crime, or only after its commission). Depending on this, the involvement of the driver in the committed offense, his or her awareness of criminal intentions and the connection with other members of the criminal group may be determined [6].

As the study of judicial and investigative practice shows, traces of the running gear of vehicles (usually tires) are most often collected during the inspection of the scene in criminal proceedings concerning theft (Part 4 of Article 185 of the Criminal Code of Ukraine); robbery (Parts 2 and 4 of Article 186 of the Criminal Code of Ukraine); violent robbery (Part 4 of Article 187 of the Criminal Code of Ukraine); and extortion (Part 4 of Article 189 of the Criminal Code of Ukraine).

The main tasks of the traceological examination of vehicle traces in such criminal proceedings are the identification (individualization) of a specific vehicle based on its parts and traces left at the scene of the criminal offense; diagnostic tasks (establishing the properties and condition of vehicles); and situational tasks (establishing the mechanism of trace formation and the mechanism of interaction between the vehicle and other objects, etc.) [4].

If tire traces of a vehicle have been collected at the scene, the following questions

should be submitted for resolution by a traceological examination: What model of tire left the traces? On which types (classes or models) of vehicles can tires of this model be installed?

If the vehicle has been identified, the following questions should be submitted for resolution by the examination: Were the traces collected at the scene left by this vehicle? Were the traces collected at different scenes left by the same vehicle?

In addition to the vehicle traces collected at the scene, the expert should be provided with the tires (or wheels as assemblies) seized from the vehicle that was likely used in the commission of the criminal offense. At the same time, the expert must be informed of the position in which each of the submitted wheels was installed (front, rear, right, or left) [5, p. 73].

Traceological examination of locking and security (control) devices is most often appointed during the investigation of such profit-motivated criminal offenses as theft (Part 4 of Article 185 of the Criminal Code of Ukraine).

The main tasks of this examination are establishing the fact and method of unlocking (overcoming) a locking device, determining the types of objects used for this purpose, identifying these objects, and, in the case of seals, additionally establishing the fact of their reattachment and identifying the sealing pliers, etc.

Most often, the objects of such an examination are a lock recovered from the scene and/or its locking mechanism (depending on the design of the lock). As is known, a lock may be either unlocked or broken. A lock should be considered broken if it has lost its ability to lock, that is, when its parts and mechanisms have been significantly damaged or destroyed as a result of mechanical, chemical, or thermal impact. A lock may be unlocked using the original key, its duplicate, a picked key, or a foreign object. Such a foreign object may include a lock pick (a specially manufactured tool) or an ordinary household item used accidentally (a nail, a pin, etc.). A lock pick may be either homemade (a thief's tool) or industrially manufactured. When a foreign object is used, the lock usually remains functional and capable of locking [7, p.180].

The recovered lock (as an assembly) or its locking mechanism (depending on the design of the lock) must be submitted for traceological examination in the condition in which it was discovered at the scene and seized. It is prohibited to insert any objects into the keyhole (including the original keys) or to perform any other manipulations with the lock prior to its forensic examination.

The following questions should be submitted for resolution by the examination: Is the lock mechanism functional? If not, what is the nature of the malfunction? Was the lock unlocked using a foreign object (a lock pick, a selected key, or a forged key)? By what method was the lock unlocked (or broken)? [4]. By what method was the lock damaged? Were the locks submitted for examination (recovered from different crime scenes) unlocked (or broken) in the same manner? In what state (locked or unlocked) was the lock at the moment it was damaged? Does the original key bear any features characteristic of the production of its copy or cast? [8, p.152].

If tools resembling lock picks are seized from a suspect, these objects must also be submitted for the examination in question. In this case, the following questions should be submitted to the experts: Is it possible to unlock this lock using the tool (object) seized from ... (full name)? Was the lock recovered during the inspection of the scene (date, location) unlocked using the objects seized from ... (full name)? [4].

Traceological examination of seals and other control devices is usually appointed during the investigation of such profit-motivated criminal offenses as theft (Part 4 of Ar-

ticle 185 of the Criminal Code of Ukraine) (most often theft of cargo transported by rail, sea, or road transport).

At the stage of the pre-trial investigation, when the persons suspected of committing the criminal offense have not yet been identified, the expert examination of seals and other control devices should be aimed at obtaining information of both a diagnostic and identification nature regarding the fact and method of opening and reattaching seals or other control devices discovered during the inspection of the scene.

The objects of such an examination include: (a) the sealing and locking device itself and its parts recovered from the scene; (b) tools and instruments used by offenders to remove sealing locks; (c) comparative samples of new sealing and locking devices and those opened using standard tools; (d) standard tools (pliers with pointed jaws and cable cutters) used for removing sealing and locking devices [9, p. 15].

To solve diagnostic tasks, the seal recovered from the scene is provided to the expert, and the following questions are submitted for resolution by the examination: Was the seal opened and then crimped again after its initial crimping with sealing pliers? By what method and with the use of which tool was the seal opened and re-crimped? With a tool of what type was the seal opened? Is it possible to remove from this seal the material used for sealing (wire, twine, cord) without violating its integrity? What is the content of the numerical and alphabetical markings on the contact surfaces of the seal? Were the sealing procedures properly followed when this seal was applied? By what method was this control device unlocked (removed) and returned to its place? Were the seals crimped using the same sealing pliers?

If the person suspected of committing the criminal offense has been identified and sealing pliers, pointed-jaw pliers, cable cutters, etc. have been seized from that person, they must be submitted to the expert together with the seal. In addition, in order to ensure the possibility of conducting experimental tests, the expert should be provided with 10-15 uncrimped seals similar to those under examination, as well as samples of the materials (wire, twine, cord) used during sealing [4].

Traceological examination of burglary tools may be appointed during the investigation of theft (Part 4 of Article 185 of the Criminal Code of Ukraine) if traces of forced entry into a barrier (doors, windows, bars, walls, etc.) are discovered during the inspection of the scene.

The main tasks of this examination are: establishing the specific item or the type (characteristic features) of a tool, instrument, or device based on the traces of its action; determining the mechanism (method) of the break-in (or other action), the direction in which the barrier was forced (from the inside or from the outside), the type (kind) of object that left the trace, the method of its manufacture, etc. [4].

During the investigation of theft, the following main questions may be resolved by this examination: Was the break-in committed using one or several tools? With a tool of what type was the break-in committed? By what method was the object separated (cutting, chopping, sawing, drilling, etc.)? From which side (internal or external) was the barrier (wall, window, bars, etc.) forced? Were the traces of forced entry recovered from different scenes left by the same tool?

In the event that a suspect is detained and tools (instruments) that were likely used to force the barrier are seized from that person, the following question is submitted for resolution by the examination: Was the barrier (or barriers) forced using this particular tool (instrument)?

For examination, the expert is provided with objects or their parts bearing traces of

forced entry, as well as the protocol of the scene inspection with a photo table and video recording materials.

If the objects of examination are traces of drilling, sawing, or crushing, the expert should also be provided with shavings, chips, or sawdust found at the scene, and their location relative to the barrier or other object should be indicated. If the circumstances of the proceedings indicate that such particles could have been formed not only by the tools being examined, the expert should be informed of this [8, p. 162].

The conduct of forensic traceological examinations using 3D models of objects is considered promising. For the purpose of such examinations, experts may be provided with a digital 3D model of a volumetric trace produced by means of laser 3D scanning and a 3D model of the probable trace-forming object, or the object itself in its physical form. In the latter case, the expert must produce a 3D model of the submitted physical object using 3D scanning and/or create experimental impressions and generate 3D models of the experimental traces.

During the examination, 3D models of the trace submitted for analysis and the experimental trace may be compared with each other, as well as 3D models of the trace submitted for analysis and the contact surface of the trace-forming object. The second type of examination may be applied only to static traces. For its implementation, it is necessary, using appropriate software, to invert the normal of the 3D model of the trace (that is, to "turn it inside out"), as a result of which the model becomes a direct representation of the trace-forming surface, allowing a direct comparison between the models of the trace and the probable trace-forming object.

The following questions may be submitted to the expert entrusted with conducting this examination: Is the trace collected during the inspection of the scene and copied by means of 3D scanning suitable for identification? If so, was this trace left by the object seized during the pre-trial investigation (and recorded by means of 3D scanning)? [10, p. 271].

It should be noted that in the countries of the European Union semi-automated systems (hardware and software complexes) designed for conducting such examinations are already in operation. For example, the Laboratory Imaging s.r.o. (known in Ukraine for the widely used ballistic identification systems – BalScan) also produces the systems ToolScan and ToolScan R360, which allow the creation, examination, and comparison of digital 3D models of volumetric traces produced by tools of various types and purposes in both manual and automated modes [11].

Conclusions. In summary, it should be noted that forensic dactyloscopic and traceological examinations play a significant role in establishing the circumstances of such profit-motivated criminal offenses committed under the conditions of the legal regime of martial law as theft (Part 4 of Article 185 of the Criminal Code of Ukraine); robbery (Parts 2 and 4 of Article 186 CC of Ukraine); violent robbery (Part 4 of Article 187 CC of Ukraine); extortion (Part 4 of Article 189 CC of Ukraine); fraud (Part 3 of Article 190 CC of Ukraine); violent unlawful taking of a vehicle for profit-motivated purposes (Parts 2 and 3 of Article 289 CC of Ukraine); unlawful deprivation of liberty or abduction (Part 2 of Article 146 CC of Ukraine); intentional homicide committed for profit-motivated reasons (Clause 6, Part 2 of Article 115 of the CC of Ukraine) and intentional homicide committed by order (Clause 11, Part 2 of Article 115 CC of Ukraine), etc. Their results depend on the quality of the materials provided to the experts and on the correctness of the formulation of the questions submitted for resolution by the examinations.

The conduct of forensic traceological examinations using 3D models of objects is considered promising. For the purpose of such examinations, experts may be provided

with a digital 3D model of a volumetric trace produced by means of laser 3D scanning and a 3D model of the probable trace-forming object, or the object itself in its physical form. In the latter case, the expert must produce a 3D model of the submitted physical object using 3D scanning and/or create experimental impressions and generate 3D models of the experimental traces.

Bibliographical references

1. Verkhovna Rada of Ukraine. (2022, March 3). On amendments to the Criminal Code of Ukraine regarding strengthening liability for pillage (Law No.2117-IX). https://zakon.rada.gov.ua/laws/show/2117-20#n2.
2. Movchan R.O. (2022). Analysis of the legislative decision to strengthen criminal liability for pillage. Analytical and Comparative Jurisprudence, (1), p.281-285. Available: https://doi.org/10.24144/2788-6018.2022.01.52.
3. Supreme Court of Ukraine. (2023, February 9). Decision of the panel of judges of the Second Judicial Chamber of the Criminal Cassation Court in case No.725/4274/22. Unified State Register of Court Decisions. Available: https://reyestr.court.gov.ua/Review/108959950.
4. Ministry of Justice of Ukraine. (1998, October 8). On approval of the Instruction on the appointment and conduct of forensic examinations and expert studies and the scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies (Order No.53/5). Available: https://zakon.rada.gov.ua/laws/show/z0705-98.
5. Kovalenko V.V., Bondar V.S., Vyhivskyi I.M., Drozd V.H., & Slukhayenko Yu.M. (2024). Use of special knowledge in the investigation of criminal offenses committed by organized groups or criminal organizations. Alerta.
6. Shevchenko Yu.A. (2013). General characteristics of profit-motivated crimes committed by organized criminal groups using vehicles. Combating Organized Crime and Corruption (Theory and Practice), 2(30), p.196-203.
7. Kovalenko V.V. (2023). Use of special knowledge during crime scene examination in cases of apartment burglaries. In: Bulletin of the Luhansk Educational and Scientific Institute Named After E. O. Didorenko, (3), p.177-188. Available: https://doi.org/10.33766/2524-0323.103.177-188.
8. Ruvin O.H. (Ed.). (2019). Forensic examinations in the procedural law of Ukraine: A textbook. Lira-K.
9. Kapustina M.V. (2007). Methodology for investigating cargo theft on railway transport committed by criminal groups (Abstract of PhD dissertation). Kharkiv.
10. Kovalenko A.V., Ostafiiv B.L., & Stakhiv N.V. (2023). Use of 3D technologies in forensic traceological examinations. In: Bulletin of the Luhansk Educational and Scientific Institute Named After E. O. Didorenko, 4(104), p.267-278. Available: https://doi.org/10.33766/2786-9156.104.267-279.
11. Laboratory Imaging s.r.o. (n.d.). ToolScan: Tools and toolmarks examination system (cuts, striations, imprints). Available: https://www.forensic.cz/en/products/toolscan.

CZU 351.86:341.222 **DOI: https://doi.org/10.5281/zenodo.20813808**

IDENTITY FRAUD AS A BORDER RISK: METHODS OF IDENTIFICATION AND PREVENTION

Natalia BUZA,
University Assistant,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0004-8686-8253

Valeria SEREBREAN
University Assistant,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0009-9137-9223

Abstract
Identity imposture represents one of the major threats to border security, having direct implications for combating illegal migration, transnational crime, and terrorism. The purpose of this research is to analyze identity imposture as a major risk to border security, as well as to identify effective methods for detecting and preventing this phenomenon.
The research is based on methods of legal-dogmatic analysis, normative analysis of the applicable national legislation, and the examination of operational practices used in border control. The main results highlight that advanced document verification, the use of biometric technologies, and the operation of integrated information systems constitute essential tools for identifying attempts of identity imposture, while interinstitutional cooperation, information exchange, and continuous professional training of border personnel significantly contribute to reducing the associated risks.
Keywords: border security, identity imposture, border control, document fraud, biometric identification.

IMPOSTURA IDENTITARĂ CA RISC LA FRONTIERĂ: METODE DE IDENTIFICARE ȘI PREVENIRE

Abstract
Impostura identitară reprezintă una dintre principalele amenințări la adresa securității frontierei, având implicații directe asupra combaterii migrației ilegale, criminalității transfrontaliere și terorismului. Scopul cercetării constă în analiza imposturii identitare ca risc major pentru securitatea frontierei, precum și în identificarea metodelor eficiente de detectare și prevenire a acestui fenomen.
Cercetarea se bazează pe metode de analiză juridico-dogmatică, analiză normativă a legislației naționale aplicabile și examinarea practicilor operaționale utilizate în controlul de frontieră. Principalele rezultate evidențiază faptul că verificările documentare avansate, utilizarea tehnologiilor biometrice și funcționarea sistemelor informatice integrate constituie instrumente esențiale pentru identificarea tentativelor de impostură identitară, iar cooperarea interinstituțională, schimbul de informații și formarea profesională continuă a personalului de frontieră contribuie semnificativ la reducerea riscurilor asociate.
Cuvinte-cheie: securitatea frontierei, impostura identitară, controlul de frontieră, frauda documentară, identificare biometrică.

Introduction. Border security represents one of the fundamental pillars of national and regional security, playing the role of protecting territorial integrity, preventing unauthorized access to a state's territory, and combating transnational threats. In the context of globalization and the increase in international mobility, flows of persons and goods have grown considerably, generating additional challenges for border authorities. These challenges are not limited to human trafficking or smuggling, but also include identity-based threats, such as identity imposture, which can seriously undermine the effectiveness of security systems. Identity imposture refers to the use of false identities, assuming the identity of another person, or the substitution of persons in order to circumvent border control, thereby facilitating illegal activities such as clandestine migration, human trafficking, smuggling, and, in extreme cases, terrorism.

The relevance of this topic is also confirmed by recent geopolitical developments. Following the outbreak of the war in Ukraine in February 2022, the Republic of Moldova received over 300,000 refugees within a short period, which required an immediate adaptation of control procedures and generated unprecedented pressure on the capacity for identity verification at border crossing points. In this context, the Council of the European Union authorized the signing of the Agreement between the European Union and the Republic of Moldova on the operational activities carried out by the European Border and Coast Guard Agency (Frontex) on the territory of the Republic of Moldova, signed on 17 March 2022 and applied on a provisional basis from the same date [1]. The Agreement allowed, for the first time, the deployment of Frontex teams outside the territory of the European Union under the Agency's new consolidated mandate, providing direct support to Moldovan authorities in screening, registration, and identity verification activities.

In recent decades, the complexity of border threats has grown alongside technological development and the sophistication of fraudulent methods. Falsified documents are becoming increasingly difficult to detect by traditional means, and persons attempting to cross the border using false identities are becoming ever better prepared to evade controls. The Frontex Annual Risk Analysis for 2025-2026 expressly draws attention to the fact that fraudulent documents, visa abuse, and the increase in traffic through less-controlled airports represent a continuously growing challenge at air borders, and that organized criminal groups are becoming increasingly agile, using digital tools, drones, and false documents to circumvent border control [2]. In this context, identity imposture can no longer be regarded merely as an administrative or legal infringement; it represents a major risk to state security, with direct implications for the capacity of authorities to maintain control and safety at the border.

The authorities responsible for border security are thus faced with the need to implement control procedures that are effective, rapid, and adaptable to new forms of identity fraud. These procedures include detailed document checks, advanced biometric technologies, integrated information systems, and national and international databases for verifying the identity of persons. Biometric technologies, such as facial recognition, fingerprinting, and iris scanning, have become essential tools for the rapid identification of persons attempting to cross the border under a false identity or using documents belonging to other persons. At the same time, integrated information systems allow for the rapid exchange of information between authorities and between states, facilitating the identification of cross-border criminal networks and the prevention of illegal activities.

Beyond the technological aspects, identity imposture also requires a complex institutional and operational approach. Interinstitutional cooperation, the constant exchange of information, and the continuous training of border personnel are essential elements for reducing the risk of identity fraud. Risk assessment and behavioral analysis of persons

crossing the border are also important methods that allow authorities to identify anomalies and react preventively. In this regard, identity imposture may be viewed not only as a technical problem, but also as a multidimensional phenomenon involving human, technological, and organizational factors.

Recent studies emphasize that identity imposture is often part of a broader system of organized cross-border criminality. The persons involved may be supported by well-structured networks that provide false documents, training on border control procedures, and logistics for illegal crossings. This organizational dimension structures the risk in a systemic manner, demonstrating that the mere checking of documents is no longer sufficient. In this context, the need emerges for an integrated approach that combines modern technologies, standardized procedures, behavioral analysis, and institutional cooperation.

Purpose of the research. The present article aims to analyze identity imposture as a major border risk, to identify the main detection methods, and to examine the strategies for preventing and reducing this risk. The main objective is to highlight the importance of adopting an integrated and proactive perspective that combines technological, methodological, and organizational solutions. In this way, the article seeks to consolidate the capacity of authorities to maintain border security and to respond effectively to the challenges generated by identity imposture.

Discussions and results obtained. I. Theoretical Framework and Review of the Specialized Literature. "*The impostor is defined as a person who presents themselves as another person*" [3, p.2]. In addition to this general definition, the specialized literature also employs formulations such as "impostor, assumed identity, altered appearance," which capture the operational dimension of the phenomenon under analysis.

The analysis of identity imposture as a border risk requires, first and foremost, a conceptual clarification of the main notions used in doctrine and in security practice, as well as an examination of how these are addressed in the specialized literature. The field of border security lies at the intersection of several branches of knowledge, criminal law, administrative law, national security, and migration management, which determines a heterogeneous and, at times, fragmented approach to identity-related phenomena.

In the specialized literature, border security is generally defined as the totality of legal, institutional, and operational measures aimed at protecting the territorial integrity of the state and preventing unauthorized access to its territory. Most authors emphasize the multidimensional nature of border security, noting that it is not limited to the physical control of the border, but also includes informational, technological, and human components. In this context, the identity of a person represents a central element of the control mechanism, as the correct establishment of identity constitutes the prerequisite for any legal decision regarding the permission or refusal of border crossing.

From a typological standpoint, identity imposture manifests itself in border practice in several forms. The first category consists of imposture through physiognomic resemblance (look-alike fraud), in which the impostor presents an authentic document belonging to another person with similar features. A second category includes identity substitution through authentic documents fraudulently obtained on the basis of previously forged supporting documents (e.g., counterfeit birth certificates), while a third category concerns the use of false or falsified documents, either through the material alteration of an authentic document or through its complete counterfeiting. ICAO Doc 9303 standards provide specific technical security elements, the Machine Readable Zone (MRZ), the biometric chip storing the facial image and, optionally, fingerprints, as well as the electronic signature verified through the Public Key Directory, precisely to limit the possibility of

counterfeiting and to enable the automated authentication of the document [4].

The concept of identity imposture is addressed in doctrine, as a rule, indirectly, being analyzed either in connection with document forgery or in the context of identity fraud or organized cross-border criminality. Some authors treat identity imposture predominantly as a matter of document authenticity, placing emphasis on material falsification and the security features of identity documents. This approach, although technically relevant, proves insufficient to explain situations in which the documents are authentic but used by persons who are not their lawful holders. Other authors extend the analysis to the behavioral and operational dimension of identity imposture, highlighting the role of person substitution and the fraudulent assumption of a real identity.

The specialized literature highlights the fact that this type of imposture frequently occurs in situations where there is a partial physiognomic resemblance between the impostor and the document holder, or in cases where the holder's appearance has undergone significant changes over time as a result of aging, surgical interventions, medical conditions, or other factors. In these situations, travel documents, although technically authentic, no longer faithfully reflect the current identity of the holder, which significantly complicates the border control process.

International literature, including guidelines developed by organizations such as the International Civil Aviation Organization (ICAO) and the European Border and Coast Guard Agency (Frontex), emphasizes the importance of using biometric methods and behavioral assessment in the process of identifying persons. These sources also highlight the limitations of control based exclusively on the examination of travel documents, in the absence of clear procedures regarding their renewal in cases of changes to the holder's physical appearance. From a legislative perspective, comparative studies reveal significant non-uniformity across national regulations concerning the obligation of a person to renew their travel document in the event of a change in physiognomy. While some states expressly provide for this obligation, others limit themselves to general provisions concerning the validity of the document, without detailing the specific circumstances requiring the issuance of a new one. This lack of normative clarity is identified by numerous authors as a risk factor that facilitates the fraudulent use of authentic documents and creates major difficulties for control authorities.

Research focused on law enforcement practice highlights the fact that the absence of objective legal criteria regarding mandatory physiognomic changes forces border officers to make operational decisions within a limited timeframe, assuming legal and professional risks. In the absence of clear regulations, the assessment of identity remains largely dependent on the professional experience and individual evaluation capacity of the control officer.

Taken as a whole, the analysis of the existing literature highlights the fact that, although identity imposture is recognized as a major border risk, the current doctrinal and normative framework does not provide unified and integrated solutions for managing the situations generated by the fraudulent use of authentic documents, particularly in the context of changes to the holder's appearance. This gap justifies the need for applied research that correlates the legal, operational, and technological dimensions of border control and contributes to the formulation of proposals for improving legislation and the procedures for preventing identity imposture.

II. Applicable Normative Framework in the Republic of Moldova. **National Regulations on Border Control and Travel Documents**. At the domestic level, the control of crossing the state border of the Republic of Moldova is regulated by a set of normative acts establishing the competences of the authorities involved and the conditions for the

validity of travel documents. The basic legal framework is constituted by Law No.28 of 15 February 2024 on the State Border of the Republic of Moldova [5], which replaced Law No.215/2011 and became applicable as of 6 January 2025 [6]. The new law aims to strengthen border security and align with European standards, partially transposing the provisions of Regulation (EU) 2016/399 (the Schengen Borders Code) and facilitating clarity in the interaction between citizens and border officers by explicitly establishing the obligation to present a valid identity document for access to the border area. The law also introduces provisions aimed at reducing bureaucracy and clarifying document verification procedures at checkpoints; however, it does not expressly provide detailed rules on the renewal of travel documents in cases of significant changes to the holder's physiognomy, an aspect flagged as a gap in the operational practice of border authorities [6].

The implementing mechanisms of Law No.28/2024 are detailed by Government Decision No.862 of 18 December 2024 on the implementation of the provisions of the new border law [7], a normative act that updates the rules on access to and activities in the border zone, the concept of the protection strip, and the specific verification procedures at crossing points. Concurrently, the regime of identity documents is regulated by Law No.273/1994 on identity documents within the national passport system [8], which establishes the categories of documents issued to citizens and the general conditions for their validity.

For example, the list of travel documents accepted for border crossing includes specific technical conditions and internationally recognized standards, alongside the possibility for border personnel to use official specimens for the identification of forgeries and the examination of suspicious documents. In practical operations, border officers rely on libraries of authentic and falsified images of travel documents, as well as on national and international databases, for the purpose of rapidly authenticating documents presented at checkpoints.

Regulations on foreigners' documents (such as minimum validity periods, blank pages, etc.) are stipulated in migration legislation, which requires that documents be valid and comply with international requirements at the time of entry into the Republic of Moldova. The national legal framework also includes provisions on the duration of validity and the technical conditions of documents accepted for border crossing, including the requirement that they have been issued within the last 10 years [9].

In addition to the strict framework concerning travel documents, national legislation also provides for rules on the protection of personal data in border control procedures, including the obligation of the border police to collect, process, and protect the personal data of persons crossing the border, in accordance with data protection legislation.

III. Systems and Databases Used in the Identification of Identity Imposture. The effectiveness of border control depends directly on the capacity of authorities to verify, in real time, the authenticity and validity of the document presented. A central instrument in this regard is the INTERPOL database on Stolen and Lost Travel Documents (SLTD), which enables the verification of an identity or travel document within seconds by comparing it with records submitted by Member States. According to data published by INTERPOL, the SLTD database contains approximately 138 million records and was queried approximately 3.6 billion times in 2023, generating 232,423 positive results that enabled the identification of attempts to use compromised documents [10]. These figures highlight not only the scale of the phenomenon, but also the operational value of a globally shared database for the prevention of identity imposture.

At the level of the European Union, a similar instrument with extended functionalities is the Entry/Exit System (EES), established by Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 [11]. The EES electronically records the date, time, and location of entry and exit of third-country nationals crossing

the external borders of the Member States, together with biometric data consisting of a facial image and fingerprints. The system automatically calculates the authorized length of stay and generates alerts when this is exceeded, contributing both to the identification of persons using multiple identities and to the detection of anomalies in travel behavior.

Complementing the official databases, border authorities also use visual reference tools, such as the False and Authentic Documents Online (FADO) system, administered at the European level and made available through Frontex. FADO provides high-resolution digital images of both authentic and false or counterfeit documents, supporting the detailed comparison of security elements (microtext, holograms, UV features, OVI structures, etc.) and enabling the rapid recognition of known forgery typologies.

IV. Legislative Gaps and Difficulties in Application in Atypical Situations. Although the Moldovan normative framework and international standards provide a clear set of rules for the validity and structure of travel documents, there are no explicit provisions regarding the obligation to obtain a new document in cases of significant changes to the holder's physiognomy. This gap creates significant practical difficulties for border officers: in the absence of clear regulations, the assessment of identity remains largely at the discretion of the control officer, which may generate discrepancies in application and legal or security risks.

The technical character of identity verification is also sensitive to the quality of the photograph in the document. ICAO standards allow for biometric passports a validity of up to 10 years [4], an interval during which a person's appearance may change substantially, whether as a result of the natural aging process, aesthetic surgical interventions, trauma, medical conditions, or other factors. When the differences between the document photograph and the person's appearance are significant, automated facial recognition systems may generate either false negatives (the rejection of the actual person) or, more seriously, false positives (the acceptance of an impostor), particularly in situations where the impostor and the holder share a natural physiognomic resemblance.

Furthermore, the adaptation of national regulations to international technological developments requires continuous legislative and institutional reforms in order to maintain consistency between technical requirements and the legal obligations concerning travel documents. The progressive implementation of the EES at the external borders of the European Union [11], with which the Republic of Moldova shares crossing points through Romania, exerts additional pressure for the harmonization of national procedures with European biometric standards, both with regard to the quality of facial images recorded and the interoperability with European information exchange systems.

V. European Best Practices. At the European level, the principles and practices of identity and document control are consolidated through coordinated actions of the European Union and its specialized agencies, in particular the European Border and Coast Guard Agency (Frontex).

Frontex considers that identity fraud and the fraudulent use of documents represent a significant threat to internal security and to border control systems, as such fraud can be used as a vector for other major cross-border crimes, such as human trafficking or terrorism. The Frontex Annual Risk Analysis 2025-2026 report confirms this assessment, identifying as priority risks at air borders the use of fraudulent documents, visa abuse, and the increase in traffic through less-controlled airports, as well as the increased agility of organized criminal groups exploiting digital tools and false documents to circumvent controls [2].

In the operational context, Frontex provides support through centers of excellence and training programs that assist participating states in detecting false documents and strengthening verification capacities at the border, including through the exchange of

expertise and technical best practices. In addition, Frontex initiatives integrate modern tools for the collection and analysis of digital images of false and authentic documents (such as the False and Authentic Documents Online- FADO system), developing harmonized standards for the authentication of identity documents at the European level.

A concrete example of best practice applicable to the Republic of Moldova is the Agreement between the European Union and the Republic of Moldova on the operational activities carried out by Frontex on the national territory, signed on 17 March 2022 [1]. Under this agreement, Frontex teams were deployed at the Moldovan border to support national authorities in the daily activities of border management, including person screening, identity checks, and border surveillance tasks. This represents the first agreement of its kind concluded under the consolidated Frontex mandate, conferred by Regulation (EU) 2019/1896, which gives the Moldovan case reference value at the regional level.

Cooperation with Frontex also includes the professional training of border officers in detecting document fraud, with actions placing emphasis both on the technical identification of document security features and on the operational aspects related to the behavior of persons during the control [12]. Combining continuous training with direct access to European and international databases (SLTD, FADO, EES) creates the conditions for a modern, integrated, and resilient border control system capable of responding to new forms of identity imposture.

Conclusions and recommendations. The analysis conducted allows for the formulation of essential conclusions and specific recommendations aimed at contributing to the improvement of the normative and operational framework in the field of preventing identity imposture at the border.

Identity imposture represents a complex and multidimensional risk to border security that cannot be effectively managed through isolated instruments. The combination of authentic documents used fraudulently, significantly altered physiognomies, and the networked organization of identity frauds requires an integrated approach that associates the legal, technological, and operational dimensions. The phenomenon is not limited to the material falsification of documents, but also includes situations in which the document is authentic, yet the holder no longer corresponds to the photograph therein, whether due to the natural aging process, aesthetic surgical interventions, or other significant physiognomic changes. This reality is confirmed by the operational practice of border officers and represents a gap that affects both border security and the right of individuals to a smooth and non-discriminatory crossing.

Based on the research formulated above, through the present article, the authors propose a series of concrete recommendations, the necessity of which is supported by authors such as S. Brînză in his work, in which the aspects identified in this article are addressed through the prism of criminal liability [13], and by the fact that the criminal legislation of the Republic of Moldova already directly sanctions the use of a false identity: Article 177[1] of the Criminal Code of the Republic of Moldova criminalizes the fraudulent use of another person's identity, providing for penalties consisting of fines or imprisonment of up to 3 years. In other words, criminal law clearly states that impersonating another person is a criminal offence, not a mere administrative irregularity. For this very reason, any gap that facilitates the commission of this offence, such as the absence of an obligation to renew one's passport when one no longer resembles the photograph therein, must be corrected. If the person crossing the border under another's identity can be held criminally liable, it is only natural that the system be equipped with all the necessary tools to identify them in time.

From a legislative standpoint, it is recommended, first and foremost, to supple-

ment the national normative framework with an express obligation to renew the travel document in cases where the holder's physiognomy no longer corresponds to the photographic image in the passport. The legislation of the Republic of Moldova governing travel documents, regulated by Law No.269/1994 on the exit and entry into the Republic of Moldova, does not contain, in its current form, an express provision establishing the obligation of the passport holder to refrain from using the document when significant changes have occurred in their identification data or major changes in their physiognomy. By reference to the legislative solution adopted by Romania through Law No.174/2024 amending and supplementing Law No.248/2005 on the regime of free movement of Romanian citizens abroad, which explicitly provides, in Article 20 paragraph (7), that "the holder of a simple electronic passport or a simple temporary passport [...] is obliged not to use the travel document when changes have occurred in the holder's identification data or major changes in their physiognomy" [14], it can be observed that the Romanian legislator has opted for a preventive and accountability-oriented approach, grounded in the principles of modern administrative law and in the international standards promoted by the International Civil Aviation Organization (ICAO) through Document Doc 9303 on machine-readable travel documents. The transposition of a similar normative standard into the legislation of the Republic of Moldova would represent not only a harmonisation with regional best practices, but also a measure of intrinsic legal coherence, whereby the holder of a travel document becomes a responsible actor in maintaining the accuracy and authenticity of the certified identity, thereby contributing to the prevention of abusive or fraudulent use of passports bearing outdated data, with direct implications for national security and the consular relations of the state.

Although the growing number of individuals resorting to cosmetic surgery or other procedures that significantly alter facial features renders this situation increasingly common, the absence of such a normative provision generates a legal vacuum in the area of identity document updating with regard to changes in a person's physical appearance.

In this context, it is considered appropriate to establish an express legal obligation to renew the passport in situations where physiognomic changes are of such a nature as to impede or complicate the identification of the holder, a measure that would contribute to strengthening the security of travel documents, preventing the fraudulent use of identity, and improving the efficiency of the activities of the competent authorities in the field of border control. Such a regulation would contribute to increasing the security of travel documents, to preventing attempts at identity substitution, and to improving the efficiency of the authorities responsible for border control.

In conclusion, the prevention and combating of identity imposture at the border, including in the forms generated by significant physiognomic changes, requires an integrated strategy combining the modernization of the normative framework, the development of technological infrastructure, the continuous training of personnel, and systematic international cooperation. The establishment of an express legal obligation to renew the passport upon an essential change in the holder's physiognomy represents a concrete, necessary, and achievable step that would consolidate both the security of travel documents and the effectiveness of border control. Only through such a coherent approach can border authorities effectively respond to the risks generated by the analyzed phenomenon and contribute to the lasting consolidation of national and regional security.

Bibliographical references

1. European Union. Council Decision (EU) 2022/449 of 17 March 2022 on the signing, on behalf of the Union, and provisional application of the Agreement between the Euro-

pean Union and the Republic of Moldova on the operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova. In: Official Journal of the European Union, L 91, 18 March 2022.
2. FRONTEX, European Border and Coast Guard Agency. Annual Risk Analysis 2025–2026. Warsaw: Frontex, 2025. Available: https://frontex.europa.eu/media-centre/news/news-release/frontex-releases-annual-risk-analysis-2025-2026-xq0c2u (Accessed 24.04.2026).
3. International Civil Aviation Organization. Doc 9303, Machine Readable Travel Documents. Part 2: Specifications for the Security of the Design, Manufacture and Issuance of MRTDs. Eighth Edition. Montréal: ICAO, 2021. ISBN 978-92-9265-405-7. Definition of "Impostor": "Impostor" is defined as someone representing oneself to be some other person. Security features should be incorporated to facilitate the visual and/or automated detection of fraudulent use of the MRTD by an impostor.
4. International Civil Aviation Organization, Doc 9303, Machine Readable Travel Documents. Part 1: Introduction. Eighth Edition. Montréal: ICAO, 2021. Available: https://www.icao.int/sites/default/files/publications/DocSeries/9303_p1_cons_en.pdf (Accessed 24.04.2026).
5. Parliament of the Republic of Moldova. Law No.28 of 15 February 2024 on the State Border of the Republic of Moldova. In: Official Gazette of the Republic of Moldova, 2024. Available: https://www.border.gov.md/legislatie-calatorie (Accessed 22.04.2026).
6. Border Police of the Republic of Moldova. The New Law on the State Border: Clearer Rules, Faster Access, Enhanced Protection. Available: https://www.border.gov.md/noua-lege-cu-privire-la-frontiera-de-stat-reguli-mai-clare-acces-mai-rapid-protectie-consolidata (Accessed: 22.04.2026).
7. Government of the Republic of Moldova. Government Decision No.862 of 18 December 2024 on the implementation of the provisions of Law No.28/2024 on the State Border of the Republic of Moldova. In: Official Gazette of the Republic of Moldova, 2024.
8. Parliament of the Republic of Moldova. Law No.273-XIII of 9 November 1994 on identity documents within the national passport system. In: Official Gazette of the Republic of Moldova, 1995, No.9, Art. 89, with subsequent amendments.
9. General Inspectorate for Migration of the Republic of Moldova. Immigration. Available: https://igm.gov.md/imigrare/ (Accessed 22.04.2026).
10. INTERPOL. Stolen and Lost Travel Documents (SLTD) Database [online].. Available: https://www.interpol.int/en/How-we-work/Border-management/SLTD-database-travel-and-identity-documents (Accessed 22.04.2026).
11. European Union. Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States. In: Official Journal of the European Union, L 327, 9 December 2017, pp.20-82.
12. MOLDPRES, State News Agency. Border Police Officers Trained in Detecting Forged Documents. Available: https://www.moldpres.md/rom/societate/politistii-de-frontiera-instruiti-in-depistarea-documentelor-falsificate (Accessed 22.04.2026).
13. Brînza S., Stati V. Identity fraud: What it is and when it entails criminal liability? In: Scientific Journal of the State University of Moldova, 2025, No.3(183), CZU:343.522:343.13(478), p.11.
14. Law No.174/2024 amending and supplementing Law No.248/2005 on the regime of free movement of Romanian citizens abroad. In: Official Gazette, Part I, No.516 of 3 June 2024. In force from 3 July 2024 (Accessed 22.04.2026).

CZU 316.613.4:316.48 **DOI: https://doi.org/10.5281/zenodo.20813946**

THE ROLE OF COLLECTIVE EMOTIONS IN THE OUTBREAK AND MAINTENANCE OF CONFLICTS

Maria Cristina CHIRU,
PhD, Associate Professor,
Associate University Lecturer,
Danubius International University, Galaţi,
Romania
ORCID: 0009-0006-0641-0993

Abstract

In the contemporary literature on the dynamics of social and political conflicts, collective emotions are regarded as genuine mechanisms that influence both the outbreak and the perpetuation of conflicts. They are no longer viewed as mere reactions to environmental events, but as active forces that shape collective behavior, public discourse, and political decision-making. Primary and universal emotions such as fear, anger, and shame, together with hatred, resentment, and revenge, transcend personal experience and become salient at the group level, reinforcing social and national identities.

In the early stages of conflict, fear plays a major triggering role by amplifying perceptions of danger and facilitating the acceptance of radical measures, including violence. If fear initiates conflict, anger and hatred contribute to its intensification. At the collective level, hatred justifies aggression, fosters the dehumanization of the adversary, and weakens moral inhibitions. In this context, public discourse plays an essential role in activating and maintaining collective emotions. Specific forms of communication such as fear speech and hate speech transform fear and anger into instruments of social mobilization. Fear speech amplifies perceptions of threat, while hate speech stabilizes hostility and legitimizes the perpetuation of violence. Shame and humiliation may fuel resentment and revenge, contributing to the escalation of tensions and conflicts.

In conclusion, collective emotions function as genuine psychological mechanisms that activate conflicts, while collective memory contributes to maintaining a conflict-oriented perspective on reality.

Keywords: conflict, collective emotions, emotional climate, fear speech, hate speech.

ROLUL EMOȚIILOR COLECTIVE ÎN DECLANȘAREA ȘI MENȚINEREA CONFLICTELOR

Abstract

În literatura contemporană de specialitate privind studiul dinamicii conflictelor sociale și politice, emoțiile colective sunt considerate veritabile mecanisme ce influențează atât declanșarea, cât și perpetuarea acestora. Nu mai sunt privite ca simple reacții la evenimentele din mediul înconjurător, ci ca forțe active care modelează comportamentele colective, discursul public și deciziile politice. Emoțiile primare, universale precum frica, furia, rușinea și corespunzător ura, resentimentele și răzbunarea transcend experiențele personale și devin saliente la nivel de grup, accentuând identitățile sociale și naționale.

În faza incipientă a conflictelor, frica joacă un rol declanșator major, amplificând percepția pericolului și facilitând acceptarea unor măsuri radicale, inclusiv violența. Dacă frica declanșează conflictul, furia și ura contribuie la intensificarea acestuia. La nivel colectiv, ura justifică agresiunea, determină dezumanizarea adversarului și reduce inhibițiile morale. În acest context, discursul public joacă un rol esențial în activarea și menținerea emoțiilor colective. Astfel, forme specifice de comunicare precum fear speech și hate speech transformă frica și furia în instrumente de mobilizare socială. Fear speech amplifică percepția pericolului, în timp ce hate speech stabilizează ostilitatea și justifică perpetuarea violenței. Rușinea și umilința pot alimenta resentimentele și răzbunarea, contribuind la escaladarea tensiunilor și conflictelor.

În concluzie, emoțiile colective funcționează ca veritabile mecanisme psihologice activatoare ale conflictelor, în timp ce memoria colectivă contribuie la menținerea unei perspective conflictuale asupra realității.
Cuvinte-cheie: conflict, emoții colective, climat emoțional, discurs instigator la frică, discurs instigator la ură.

Introduction. Social and political conflicts represent one of the most difficult problems of contemporary society. On a large scale, they involve extensive violence and profoundly affect the well-being of the individuals involved, while simultaneously hindering the development of societies as a whole. In such conflicts, beyond the immediate costs associated with the loss of human lives, individuals feel compelled to sacrifice their own interests in favor of the conflict, while society pays a high price in economic, educational, and social terms.

Materials applied. Numerous studies [3; 8] have demonstrated that even societies involved for long periods in violent conflicts highly value the concept of peace (even if only at an abstract level) and declare that they would do "whatever is necessary" to promote it. They are willing to make certain concessions, yet they lack confidence that such concessions would lead to the resolution of conflicts and the reduction of violence. They do not trust their adversaries, believing that they will not abandon their immoral and aggressive behavior, and they fear that such concessions would place them in a position of risk and vulnerability, including the fear of being perceived as assuming responsibility for events in the history of the conflict considered immoral.

Eran Halperin [9] describes all these processes (which he considers fundamental barriers to peacebuilding and conflict resolution) as emotional phenomena because they synthesize the fundamental beliefs and evaluations of societies involved in conflict, as well as the central political motivations implied by these evaluations. When evaluations and motivations are accompanied by intense affective experiences characteristic of violent conflicts, they generate extremely negative emotions that adversely affect the likelihood of promoting peace. Thus, people who experience fear are motivated to avoid risks of any kind and become reluctant toward new peace initiatives or ideas. For those dominated by hatred, there is no genuine reason to initiate negotiations or make compromises, because they do not truly believe that such political actions can significantly change the behavior or destructive intentions of the opposing group. Finally, anger may sometimes motivate people to respond aggressively even to seemingly constructive signals coming from their enemies.

Discussions and results obtained. **I. Transitional Contexts and Emotional Climate: The Basis for the Outbreak and Maintenance of Conflicts**. Just as individuals may be characterized by a dominant emotion, societies may also develop collective emotional orientations that influence how their members perceive social reality, interpret events, and react to situations of tension or threat. Collective emotions are not merely accumulations of individual emotions, but rather constitute genuine shared affective frameworks that shape social and political behavior. The first studies on how collective emotions are generated were conducted in 1992 by Joseph de Rivera, who focused on the contexts in which they emerge, emphasizing the distinction between emotional atmosphere, emotional culture, and emotional climate [15]. Building on these contributions, Daniel Bar-Tal proposed the concept of collective emotional orientation (the characteristic tendency of a society to express a particular emotion) and highlighted the behavioral implications of collective emotions in conflict situations, arguing that the most important factor influencing their formation is context [1]. The author emphasizes that collective emotions have major behavioral implications, especially in conflict situations, because they influ-

ence the way individuals interpret the actions of opposing groups, evaluate threats, and justify their own reactions. From this perspective, collective emotions become central components of the social ethos of conflict, contributing to the construction of shared representations regarding danger, victimization, security, or legitimacy.

Focusing specifically on social contexts, Daniel Bar-Tal et al. distinguish between enduring cultural contexts, which form the basis of what may be called emotional culture, and transitional contexts, which emerge as a result of specific socio-political structural relations within a society, major events, or significant information, thereby constituting the basis of emotional climates [3]. Unlike emotional culture, which implies a certain stability and continuity over time, emotional climate is more flexible and sensitive to contextual changes, undergoing rapid transformations during periods of crisis, instability, and conflict.

Daniel Bar-Tal considers transitional context to be responsible for the outbreak and maintenance of conflicts, defining it as the set of relatively temporary physical, social, political, economic, military, and psychological conditions that form the environment in which individuals and collectivities function [2]. Transitional contexts include protracted conflicts, wars, revolutions, totalitarian regimes, information concerning major threats, and peace processes, while excluding events or sets of information with limited emotional impact. Thus, transitional context is not merely the passive background of social interactions, but an active element that shapes collective perceptions and reactions. From this perspective, psychological conditions—an integral part of the societal environment—are perceived and evaluated, generating specific emotional reactions that, in turn, lead to the emergence of particular behaviors.

The context constructed by people may possess either negative or positive characteristics, generating primarily negative or positive beliefs, attitudes, and emotions. Negative contexts may be threatening, stressful, or unjust, whereas positive contexts may be peaceful and harmonious. The former generate beliefs associated with insecurity and distrust, as well as emotions such as anger, hatred, and fear. The latter foster beliefs associated with security and trust, together with calmness and hope.

Taking into account the negative–positive asymmetry (negativity effect) [13] in reality appraisal and decision-making, negative information (compared to positive information) tends to be more coherent, more carefully analyzed, and better remembered, thereby exerting a stronger influence on analytical processes and behavioral orientations. This tendency reflects adaptive behavior, because negative information, especially information related to threats, may require rapid adjustment to new situations.

Overall, the way temporary social contexts are configured directly influences the type of collective emotional reactions and the direction of the resulting behaviors. Transitional context not only facilitates the emergence of collective emotions, but also contributes to their stabilization, transforming them into central components of a society's emotional climate. Within this framework, the study of negative emotions becomes essential for understanding the psychological and social mechanisms underlying the emergence, intensification, and persistence of conflicts, as well as for explaining how these emotions influence discourse, intergroup relations, and processes of social polarization.

II. Conflict-Specific Negative Emotions: Anger, Fear and Hatred. In the analysis of social and intergroup conflicts, understanding the emotional dimension represents an essential element in explaining their dynamics. Emotions are not merely individual reactions to external stimuli; they may also become structured at the collective level, influencing group perceptions, decisions, and behaviors. In particular, fundamental negative

emotions such as fear, anger, and hatred play a central role in shaping the ways individuals and societies interpret threats and respond to them. In this context, the analysis of these emotions offers a relevant perspective on the psychological mechanisms underlying the outbreak, escalation, and maintenance of conflicts.

Anger and fear are fundamental, primary, and universal emotions. They are among the earliest emotions to emerge in human phylogenetic evolution and have enabled human survival. They arise in situations of perceived threat and danger, allowing individuals and societies to respond adaptively. Reactions of anger or fear may be triggered by conscious evaluations of transitional contexts, but they may also be activated automatically, enabling unconscious processing.

In societies involved in conflicts, fear becomes amplified: for most individuals, fear turns into a permanent state of mind that dominates the ways they feel, think, act, and make decisions. Unlike anger, which is the most frequent emotional reaction in conflicts [9], fear is the strongest and most dominant emotion in the long term. While anger functions as the internal engine that motivates aggressive reactions, fear overwhelms the individual's entire psychic life, paralyzing actions and behaviors.

People are exposed, directly or indirectly (especially through omnipresent social media networks), to traumatic experiences. Consequently, fear is no longer vague or abstract, but becomes an integral part of everyday life—it gradually infiltrates and comes to dominate the individual's entire existence. Anxiety levels increase, feelings of safety diminish, and subjective insecurity intensifies. At the same time, a chronic and diffuse sense of victimization emerges, referred to as a "perpetual orientation of victimhood" — the belief that individuals are constantly victims persecuted by various enemies [20].

The cognitive element underlying the experience of fear is the perception of threat, while the functional role of this negative emotion is to prepare individuals for the worst possible scenario. People become hypersensitive to any cues signaling danger, emotional polarization intensifies, and fear becomes excessive, leading to a constant state of readiness for self-defense. Moreover, perceived symbolic threats (threats directed at personal values) represent some of the strongest predictors of conflict emergence.

Anger constitutes the ideal and most adaptive emotional reaction to provocations coming from an opposing group. It provides the energy necessary for retaliation while, at the same time, not entirely excluding the possibility of improvement or positive change (as hatred and contempt do).

Consequently, within the vicious cycle in which perceived provocations lead to violence and violence, in turn, generates new provocations, anger may be regarded as the "emotional fuel" that keeps this mechanism functioning at maximum intensity. According to this perspective, angry individuals attribute unjust or immoral behaviors to the opposing group, believe that urgent action is necessary to correct these perceived injustices, and consider their own group capable of initiating such corrective action [11].

In other words, anger not only motivates action, but also "rewrites" the way people evaluate risks and possible outcomes of confrontation, making aggressive actions appear more justified, safer, and more effective.

A collective orientation of fear or anger deeply penetrates the psychological structure of members of society and becomes linked to a social ethos of conflict [4]. The main problem with these two negative emotions is their stability, which may persist beyond changes in transitional contexts. At the same time, collective orientations of fear and anger tend to narrow the perspectives of society's members, linking the present to past conflict-related experiences and constructing expectations regarding the future exclu-

sively on the basis of the past [10]. Furthermore, they generate high levels of distrust and delegitimization of the adversary. Finally, collective orientations of fear and anger constitute major platforms for violence. A society dominated by fear or anger tends to react through confrontation when faced with conditions perceived as threatening.

Hatred is an extreme and enduring socially constructed negative emotion directed toward an individual or group and condemning that individual or group in a fundamental and totalizing manner [6; 7]. It is one of the most important emotions because it significantly affects people's ability to "judge clearly". In the literature, hatred is described as the most destructive affective phenomenon in the history of human nature [16].

In contexts of protracted intergroup conflict, hatred reduces public support for compromises intended to resolve the conflict, even beyond the effects of other negative emotions. In addition, hatred increases support for aggressive actions directed against the opposing group. More than that, it may even drive people to participate in massacres. Therefore, hatred contributes massively to the escalation and maintenance of long-term conflicts and represents a powerful barrier to conflict resolution.

An interesting aspect of hatred, which makes it particularly susceptible to becoming a collective emotion, is the fact that it does not require personal interaction or direct acquaintance between the hater and the hated group. The absence of interaction with the targets of hatred may even intensify it, because it reduces the likelihood of perspective-taking—the lack of direct interaction amplifies hatred because negative evaluations regarding the malicious character of the group are no longer reassessed [6].

Thus, emotions such as fear, anger, and hatred not only reflect reactions to conflictual contexts, but actively contribute to shaping and perpetuating them at both the individual and collective levels. Through their stability and their capacity to influence perceptions, evaluations, and behaviors, these emotions become central factors in the dynamics of protracted conflicts. In this sense, understanding their role is essential for explaining the mechanisms through which conflicts intensify and persist over time.

III. From Negative Emotions to Discursive Mechanisms of Conflict: Hate Speech and Fear Speech. Continuing the analysis of the role of negative emotions in conflict dynamics, it becomes essential to explore how these emotions are expressed and amplified at the discursive level. Emotions such as fear, anger, and hatred do not remain mere psychological reactions, but are transformed into instruments of social influence capable of structuring collective perceptions, legitimizing hostility, and directing group action in tense contexts.

In this regard, the concepts of hate speech and fear speech provide a relevant framework for understanding how discourse may both reflect and shape these emotions, contributing to the consolidation of threat perceptions, social polarization, and the escalation of intergroup conflicts.

Hate speech emerges as a central mechanism in the production and intensification of intergroup conflicts. Beyond its expressive dimension, hate speech contributes to redefining social norms through the banalization and normalization of hostility. The literature indicates that repeated exposure to such discourse is associated with higher levels of prejudice and increased acceptance of discriminatory expressions [22]. This process not only reflects existing divisions, but deepens them, transforming social differences into increasingly rigid lines of conflict.

Moreover, hate speech produces structural effects on conflict dynamics by inhibiting participation and reducing the space for dialogue. In line with the Spiral of Silence

Theory, exposure to hostile discourse may generate a climate of insecurity that leads individuals to withdraw from the public sphere and avoid expressing their opinions [23]. These mechanisms contribute to the marginalization of critical voices and the radicalization of dominant discourse, facilitating the reproduction of polarization [18]. Under such conditions, conflict becomes increasingly non-negotiable, fueled by simplified and antagonistic perceptions of social reality.

Furthermore, replacing legitimate criticism with forms of hostile discourse affects not only intergroup relations, but also the quality of social deliberation. Studies show that aggressive discourse contributes to the degradation of public dialogue and to the intensification of processes of adversary delegitimization [12; 14], while simultaneously exerting a disproportionate impact on certain social categories, such as women and minorities [24].

From a broader perspective, hate speech functions as a catalyst for collective mobilization around conflictual narratives. It contributes to strengthening intragroup solidarity and reinforcing symbolic boundaries between "us" and "them," generating mechanisms of conformity and social sanctioning [19]. In this way, hostile discourse becomes an integral part of collective dynamics that sustain and reproduce conflict.

Complementarily, the concept of fear speech provides an essential explanatory framework for understanding how fear is discursively mobilized. The initial definition proposed by Antoine Buyse emphasizes that this type of discourse aims to induce existential fear toward a group perceived as threatening, actively contributing to the construction of social reality [5]. Unlike hate speech, which mobilizes through direct hostility, fear speech legitimizes defensive or aggressive reactions through appeals to fear and may therefore play an even more powerful role in conflict escalation.

Subsequent research has shown that fear-based discourses are often subtler and less explicitly aggressive, which grants them greater credibility and facilitates their social acceptance [17]. By constructing simplified and emotionally persuasive narratives of threat, such discourses amplify perceptions of insecurity and contribute to heightened social polarization, with effects that may extend beyond the discursive level and influence collective behavior [17]. At the same time, their seemingly legitimate character, grounded in appeals to security or protection, makes them more difficult to challenge and easier to internalize [21].

Overall, hate speech and fear speech cannot be reduced to simple forms of expressing negative emotions, but must instead be understood as central mechanisms of conflict. They transform emotions into resources for mobilization, reinforce symbolic boundaries between groups, and reduce opportunities for dialogue and reconciliation. In this sense, these forms of discourse not only reflect conflict, but actively contribute to its production, intensification, and maintenance within the social structure.

Conclusions. The analysis of negative emotions highlights the fact that they do not merely represent reactions to conflict situations, but active mechanisms that shape collective perceptions, decisions, and behaviors. Emotions such as fear, anger, and hatred function as interpretative filters of social reality, simplifying its complexity and fostering antagonistic representations of intergroup relations. Through their stability and capacity to become sedimented at the collective level, these emotions contribute to the maintenance and reproduction of conflicts over time.

Within this framework, discourse plays a central role by transforming emotions into resources for social action. Hate speech and fear speech not only reflect existing tensions, but also amplify and legitimize them, facilitating polarization and the delegitimization of the adversary. While hate speech produces direct exclusion, fear speech con-

structs perceptions of threat that justify defensive or aggressive reactions. Together, they contribute to the escalation of conflicts and to the reduction of possibilities for dialogue and reconciliation.

Beyond its explanatory value, this perspective has essential implications for peacebuilding efforts. Understanding the role of emotions and discourse demonstrates that interventions cannot be limited to rational or institutional dimensions alone, but must also target the transformation of the emotional and discursive frameworks within which conflict develops. Reducing polarization, promoting alternative narratives, and developing forms of communication that diminish perceptions of threat thus become central components of intervention strategies.

Therefore, peace cannot be conceived exclusively as the absence of conflict, but rather as an active process of reconfiguring the emotions and discourses that sustain it. An integrated approach that takes these dimensions into account offers not only a deeper understanding of contemporary conflicts, but also concrete directions for limiting their escalation and facilitating sustainable processes of dialogue, cooperation, and reconciliation.

Top of Form

Bibliographical references

1. Bar-Tal D. Sociopsychological Foundations of Intractable Conflicts. In: Political Psychology, 2001, No.21, p.351-365.
2. Bar-Tal D. Sociopsychological Foundations of Intractable Conflicts. In: American Behavioral Scientist, 2007, No.50, p.1430-1453.
3. Bar-Tal D., Halperin E., De Rivera J. Collective Emotions in Conflict Situations: Societal Implications. In: Journal of Social Issues, 2007, 63(2), p.441-460.
4. Bar-Tal D., Raviv A., Raviv A., Dgani-Hirsh A. The Influence of the Ethos of Conflict on Israeli Jews' Interpretation of Jewish–Palestinian Encounters. In: Journal of Conflict Resolution, 2009, No.53, p.94-118.
5. Buyse A. (2014). Words of Violence: „Fear Speech", or How Violent Conflict Escalation Relates to the Freedom of Expression. In: Human Rights Quarterly, 2014, 36, No.4, p.779-797.
6. Clément M. (2023). Collective Emotions and Political Violence. Narratives of Islamist Organisations in Western Europe. Manchester University Press.
7. Halperin E. Group – Based Hatred in Intractable Conflict in Israel. In: Journal of Conflict Resolution, 2008, No.52, p.713-736.
8. Halperin E., Gross J.J. (2011) Emotion Regulation in Violent Conflict: Reappraisal, Hope, and Support for Humanitarian Aid to the Opponent in Wartime. In: Cognition and Emotion, No.25(7), p.1228-1236.
9. Halperin E. Emotions in Conflict: Inhibitors and Facilitators of Peace Making. 2016, Routledge Studies in Political Psychology: Taylor & Francis.
10. Jost J.T., Glaser J., Kruglanski A.W., Sulloway F.J. Political Conservatism as Motivated Social Cognition. In: Psychological Bulletin, 2003, No.129, p.339–375.
11. Mackie D.M., Devos T., Smith E.R. Intergroup Emotions: Explaining Offensive Action Tendencies in an Intergroup Context. In: Journal of Personality and Social Psychology, 2000, 79, p.602-616.
12. Pedersen R.T., Petersen N.B.G., Thau M. Online Abuse of Politicians: Experimental Evidence on Politicians' own Perceptions. In: Political Behavior, 2024, 47, p.119-139.
13. Peeters G., Czapinski J. Positive-Negative in Evaluations: The Distinction between Af-

fective and Informational Negativity Effects. In: European Review of Social Psychology, 1990, No.1, p.33-60.
14. Petersen N.B.G., Pedersen R.T., Thaum M. (2024). Citizens' Perceptions of Online Abuse Directed at Politicians: Evidence from a Survey Experiment. In: European Journal of Political Research, 2024, 64, p.790-809.
15. de Rivera J. Emotional Climate: Social Structure and Emotional Dynamics. In: International Review of Studies on Emotion, 1992, No.2, p.197-218.
16. Royzman E.B., McCauley C., Rosin P. From Plato to Putnam: Four Ways to Think about Hate. In: The Psychology of Hate. Washington, DC: American Psychological Association, 2005, p.3-36.
17. Saha P. ș. a. On the Rise of Fear Speech in Online Social Media. In: Proceedings of the National Academy of Sciences, 2023, 120(11).
18. Said-Hung E., Moreno-López R., Mottareale-Calvanese D. Promotion of Hate Speech by Spanish Political Actors on Twitter. In: Policy and Internet, 2023, 15, p.665-686.
19. Schissler M. (2024). Beyond Hate Speech and Misinformation: Facebook and the Rohingya Genocide in Myanmar. In: Journal of Genocide Research, 2024, 27, p.445-470.
20. Schori-Eyal N., Reifen Tagar M., Saguy T., Halperin E. The Benefits of Group-Based Pride: Pride can Motivate Guilt in Intergroup Conflicts among High Glorifiers. In: Journal of Experimental Social Psychology, 2015, No.61, p.79-83.
21. Shankaran V., Lapesa G., Wagner C. From Emotion to Expression: Theoretical Foundation and Resources for Fear Speech. In: Proceedings of the 19th Conference of the European Chapter of the Association for Computational Linguistics, 2023, No.1, p.2587-2606. Available: https://aclanthology.org/2026.eacl-long.118/ (accessed 20.03 2026).
22. Soral W., Liu J., Bilewicz M. Media of Contempt: Social Media Consumption Predicts Normative Acceptance of anti-Muslim Hate Speech and Islam Prejudice. In: International Journal of Conflict and Violence, 2020, No.14, p.1-13.
23. Tembo N.M. Women, Political Violence, and the Production of Fear in Malawian Social Media Texts. In: International Feminist Journal of Politics, 2024, 26, p.81-99.
24. Vrielink J., Joanna van der Pas., D.J. Part of the job? The effect of exposure to the online intimidation of politicians on political ambition. In: Political Studies Review, 2024, No.22, p.1022-1041.Bottom of Form

CZU 343.2:[342.5(478)+341.231.14] DOI: https://doi.org/10.5281/zenodo.20814071

THE PRINCIPLE OF LEGALITY AS A PREMISE FOR CRIME PREVENTION: LANDMARKS FROM ECHR CASE-LAW AND IMPLICATIONS FOR THE REPUBLIC OF MOLDOVA

Elena PÎRĂU,
PhD Candidate,
Moldova State University,
Legal Adviser, Office of the Vice President,
Parliament of the Republic of Moldova
ORCID: 0009-0002-3155-4826

Abstract

This article examines the principle of legality in criminal law, highlighting its essential role in crime prevention. The study proceeds from the premise that the effectiveness of the preventive function of criminal law depends not only on the mere existence of a criminal prohibition, but also on the quality of criminal-law provisions, particularly in terms of clarity and foreseeability. It demonstrates how the requirements inherent in the principle of legality help guide individual conduct and reduce the risk of arbitrary interpretation and application of criminal-law provisions.

The analysis is based on relevant legal scholarship, examined in conjunction with the case-law of the European Court of Human Rights and that of the Constitutional Court of the Republic of Moldova. The findings show that ambiguous, contradictory or excessively broad criminal-law provisions undermine legal certainty, encourage inconsistent practices and diminish the capacity of criminal law to secure voluntary compliance with legal requirements. The article concludes that the principle of legality constitutes not only a safeguard against arbitrary enforcement, but also an indispensable condition for the effective fulfillment of the preventive function of criminal law.

Keywords: principle of legality, criminalisation, foreseeability, legal certainty, crime prevention, arbitrary interpretation, quality of criminal-law provisions.

PRINCIPIUL LEGALITĂȚII CA PREMISĂ A PREVENIRII CRIMINALITĂȚII: REPERE JURIDICE DIN JURISPRUDENȚA CEDO ȘI IMPLICAȚII PENTRU REPUBLICA MOLDOVA

Abstract

Prezentul articol analizează principiul legalității în dreptul penal, evidențiind rolul esențial al acestuia în prevenirea criminalității. Studiul pornește de la premisa că eficiența funcției preventive a dreptului penal depinde nu doar de existența interdicției legale, ci și de calitatea normei de incriminare, în special sub aspectul clarității și previzibilității acesteia. Cercetarea relevă modul în care exigențele principiului legalității contribuie la orientarea conduitei persoanei și la reducerea riscului de interpretare și aplicare arbitrară a normelor de incriminare.

Analiza este realizată prin valorificarea doctrinei de specialitate, în coroborare cu jurisprudența Curții Europene a Drepturilor Omului și cu jurisprudența constituțională a Republicii Moldova. Rezultatele evidențiază că normele penale ambigue, contradictorii sau excesiv de generale afectează securitatea juridică, favorizează practici neuniforme și diminuează capacitatea dreptului penal de a asigura conformarea voluntară la exigențele legii. Astfel, principiul legalității constituie nu doar o garanție împotriva arbitrariului represiv, ci și o condiție indispensabilă pentru realizarea efectivă a funcției preventive a dreptului penal.

Cuvinte-cheie: principiul legalității, incriminare, previzibilitate, securitate juridică, prevenirea criminalității, interpretare arbitrară, calitatea normei.

Introduction. The principle of legality occupies a central place among the fundamental principles of criminal law and is enshrined in international and regional human rights instruments, as well as in the domestic legal order [1, p.11]. In criminal matters, this principle requires that the criminalisation of conduct, the establishment of sanctions and the imposition of criminal liability be based exclusively on legal provisions that are accessible, clear and foreseeable, thereby protecting individuals against the arbitrary application of criminal law.

In legal scholarship, the principle of legality is generally examined in relation to the requirements inherent in the formula *nullum crimen, nulla poena sine lege*, namely the prohibition of the retroactive application of a more severe criminal law, the prohibition of analogy to the detriment of the individual, and the requirement that criminal offences and sanctions be defined with sufficient precision [1, p. 11]. From this perspective, legality represents not only a safeguard against arbitrary enforcement, but also the normative framework within which criminal law may guide conduct and require compliance with legally prescribed standards.

This article examines the relationship between the principle of legality and the preventive function of criminal law, drawing on relevant legal scholarship, the case-law of the European Court of Human Rights concerning Article 7 of the European Convention on Human Rights [2], and the case-law of the Constitutional Court of the Republic of Moldova. The central thesis advanced is that the principle of legality does not, in itself, ensure crime prevention, but constitutes an essential normative premise for achieving it. The study's original contribution lies in analysing the principle of legality not only as a safeguard against arbitrariness, but also as a normative premise for crime prevention.

Methods and materials applied. The present research examines the relationship between the principle of legality and the preventive function of criminal law, proceeding from the hypothesis that crime prevention does not depend exclusively on the existence of a criminal prohibition, but also on the quality of the criminal-law provision, particularly in terms of its accessibility, clarity and foreseeability.

From a methodological standpoint, the study is predominantly doctrinal and qualitative in nature. First, relevant legal literature was analysed in order to identify the main theoretical approaches to the principle of legality, legal certainty and the conduct-guiding function performed by criminal law. This stage made it possible to delineate the conceptual framework necessary for examining the relationship between the requirements of legality and the prevention of crime.

Secondly, the legal-logical method was applied to analyse the requirements deriving from the principle of legality in criminal matters, in particular the requirements of accessibility, clarity, precision and foreseeability of criminal-law provisions. At the same time, the synthetic method was used to integrate these requirements into the broader set of guarantees specific to the rule of law and to highlight their connection with legal certainty and the limits of legal interpretation in criminal matters.

The analysis of the case-law of the European Court of Human Rights and of the Constitutional Court of the Republic of Moldova occupies a central place in the research. The judgments were selected according to substantive criteria, namely their relevance to the interpretation of Article 7 of the European Convention on Human Rights, to the standards concerning the quality of criminal law, and to the permissible limits of judicial interpretation in criminal matters. Particular attention was given to judgments that directly illustrate the relationship between the foreseeability of criminal law, legal certainty, and the risk of arbitrariness in the application of the law.

Relevant domestic legislation was also analysed, in particular constitutional provisions, provisions of the Criminal Code and Law No.100/2017 on Normative Acts, in order to assess the extent to which the standards developed in European case-law are reflected in the domestic legal framework.

The argument proceeds from the clarification of the theoretical foundations of the principle of legality, through the identification of jurisprudential standards concerning the accessibility and foreseeability of criminal law, to the assessment of their implications for the capacity of criminal law to guide individual conduct and, ultimately, to contribute to the prevention of crime.

Discussions and results obtained. **I. Crime Prevention as a Purpose of Criminal Law and the Legality Requirements Governing Criminal-Law Provisions**. Crime prevention constitutes one of the essential purposes of criminal law, alongside the protection of fundamental social values and the maintenance of the legal order. From this perspective, criminal intervention is aimed not only at responding to offences already committed, but also at preventing the commission of new offences, both through general prevention and by preventing reoffending by convicted persons.

In the law of the Republic of Moldova, this preventive dimension has an explicit normative basis. Thus, the Criminal Code [3] provides that criminal law also aims to prevent the commission of new offences, while punishment is directed not only towards the restoration of social equity and the correction and resocialisation of the convicted person, but also towards preventing the commission of new offences both by the convicted person and by others. Consequently, prevention must be understood not as an external aim of criminal law, but as one of its inherent purposes [4, p.79].

However, this purpose can be achieved only in compliance with the requirements of the principle of legality at the constitutional level and under the Convention. Crime prevention must therefore be pursued in accordance with the requirements deriving from Article 22 and Article 23(2) of the Constitution of the Republic of Moldova [5], as well as from Article 7 of the European Convention on Human Rights [2]. Therefore, the criminal-law response cannot be assessed solely in terms of its social utility, but must also be evaluated in light of the quality of the criminal-law provision on which it is based.

From this perspective, a criminal-law provision can contribute to crime prevention only if it is sufficiently clear, accessible and foreseeable to provide individuals subject to criminal law with a sufficiently precise normative framework. In the absence of a clear, accessible and foreseeable provision, the capacity of criminal law to guide conduct is weakened, while the risk of arbitrary application increases.

II. The Principle of Legality and the Law's Conduct-Guiding Function. At the theoretical level, the connection between the principle of legality and the conduct-guiding function of law is supported by Lon L. Fuller's conception of the "internal morality of law" [6, pp.102-103]. Fuller argues that law can fulfill this function only if its rules are formulated and applied in such a way that they can be known and followed by their addressees. In this respect, the generality, clarity and stability of criminal-law provisions, together with the congruence between the text of the law and its application, are not merely requirements of legislative drafting, but conditions for the effective functioning of law.

In the context of criminal law, this approach shows that the preventive effectiveness of criminalisation does not depend solely on the existence of a sanction, but presupposes the real possibility for individuals to adjust their conduct in accordance with the requirements of the law. Insofar as the criminal prohibition is formulated with sufficient precision, the addressees of the provision can identify the limits between lawful and un-

lawful conduct and regulate their behaviour accordingly. Conversely, where the content of the criminal prohibition remains uncertain, the conduct-guiding function of the law is undermined, and voluntary compliance with the requirements of the legal order becomes more difficult to achieve.

In a complementary manner, Herbert L. Packer [7, pp.261-262] emphasises that the effectiveness of criminal law does not depend on the continuous expansion of criminalisation, but on the rational and justified use of criminal sanctions. Although his reflections primarily concern the limits of criminal intervention, they are also relevant to the principle of legality, since they show that criminal intervention preserves its preventive effectiveness only when it is reserved for sufficiently serious conduct and applied on the basis of culpability [7, pp.364-366].

This perspective is also reflected in the constitutional jurisprudence of the Republic of Moldova. In Judgment No.27 of 21 September 2017 [8], the Constitutional Court held that the criminalisation of conduct and the establishment of criminal penalties are grounded in the legislature's criminal policy choices. However, such choices must be exercised in compliance with the requirements of clarity, precision and foreseeability of criminal-law provisions. The Court also stressed, in line with the case-law of the European Court of Human Rights, that the requirement of clarity of the law is satisfied where the person concerned can ascertain from the text of the law, if necessary supplemented by judicial interpretation and appropriate legal assistance, the prohibited conduct and the consequences of non-compliance.

In the same vein, in Judgment No.2 of 30 January 2018 [9], although outside the criminal-law sphere, the Constitutional Court reiterated that the law must regulate in a coherent manner, avoid legislative ambiguity and comply with the requirements of clarity and foreseeability. The Court further held that the lack of any possibility of individualising the sanction, the ambiguity as to its nature and the imprecision of the relevant provision generate legal uncertainty and affect the individual's ability to adapt their conduct and foresee the legal consequences of their behaviour. These findings are relevant, *mutatis mutandis*, to the analysis of legality in criminal matters.

III. Accessibility and Foreseeability of Criminal Law as Requirements of Crime Prevention. The accessibility of criminal law requires that criminal-law provisions be duly published and capable of being known by their addressees. In the legal order of the Republic of Moldova, this requirement derives from the State's obligation to publish normative acts and from the rule according to which a law produces effects only after its official publication. Moreover, Law No.100/2017 on Normative Acts [10] lays down requirements concerning the transparency, publicity and systematisation of regulations. Consequently, accessibility is not merely a formal requirement, but constitutes the minimum condition for criminal-law provisions to be known and taken into account by individuals in guiding their conduct.

Foreseeability concerns the substantive quality of criminal-law provisions. A law is foreseeable where individuals are able to understand what conduct is prohibited and what legal consequences may result from its breach. For the purposes of Article 7 of the European Convention on Human Rights, the formal existence of a legal provision is not sufficient. The law must also satisfy qualitative requirements, among which clarity and foreseeability occupy a central place [11, p.7]. In criminal matters, these requirements are essential, since a foreseeable provision enables individuals to adapt their conduct in accordance with the requirements of the law.

At the same time, case-law plays a role in clarifying and applying criminal-law pro-

visions, but it cannot replace the law or extend the scope of criminal liability beyond the limits of the legal text. The definition of criminal offences and penalties remains the responsibility of the legislature, while judicial interpretation is admissible only insofar as it remains coherent and foreseeable. Likewise, Law No.100/2017 on Normative Acts [10] requires legal provisions to be drafted in clear, simple and precise language, so as to exclude ambiguity and ensure the coherence and foreseeability of the legal framework.

For this reason, the prohibition of extensive interpretation to the detriment of the individual and the prohibition of applying criminal law by analogy constitute essential safeguards of the principle of legality. Consequently, the accessibility and foreseeability of criminal law are not merely requirements of legislative drafting, but also requirements of legal certainty and prerequisites for the legitimate application of criminal law.

IV. ECHR case-law. The case-law of the European Court of Human Rights is of central importance for understanding the content of the principle of legality in criminal matters, particularly as regards the requirement of foreseeability of the law and the limits of judicial interpretation. From the perspective of Article 7 of the Convention, it is not sufficient for criminal liability to have a formal basis in a legal text. The provision must also enable the individual to determine, to a reasonable degree, what conduct is prohibited and what legal consequences his or her conduct may entail.

Several relevant criteria may be derived from this case-law for assessing the compatibility of the application of criminal law with the requirements of Article 7 of the Convention. Thus, foreseeability does not require absolute precision of the criminal norm, but it does require the legal text to be formulated with sufficient clarity to enable the individual, if necessary, with the assistance of judicial interpretation and specialised legal advice, to understand the scope of prohibited conduct and the legal risk associated with it. Foreseeability is therefore assessed not in the abstract, but by reference to the text of the law, the legal context, and the manner in which it may reasonably be understood by the addressees of the law.

The Court recognises that judicial interpretation plays a necessary role in the application of criminal law, since legal provisions may require, to some extent, clarification and development through case-law. However, such judicial development is admissible only insofar as it remains consistent with the substance of the offence and reasonably foreseeable to the person concerned. In other words, courts may clarify the meaning of the law, but they may not transform interpretation into a means of extending criminal liability beyond what reasonably follows from the statutory text.

Article 7 of the Convention prohibits not only the retroactive application of a more severe criminal law, but also judicial interpretations that, in substance, result in an extensive or analogical application to the detriment of the individual. Where the meaning attributed to a provision through case-law exceeds the limits which the addressees of the law could reasonably have anticipated, the application of criminal law becomes incompatible with the principle of legality. From this perspective, the line between permissible interpretation and interpretation incompatible with Article 7 is determined by the foreseeable and gradual character of the interpretation and by its fidelity to the logic of the legal text.

Thus, in *Tristan v. the Republic of Moldova* [12], the Court found a violation of Article 7 because the national courts treated as equivalent two distinct legal concepts relating to the legal status relevant to the offence, without sufficient justification and without such an approach being reasonably foreseeable to the applicant. This case demonstrates that foreseeability concerns not only the wording of the legal text, but also the way in which it

is interpreted and applied in practice.

In *Del Río Prada v. Spain* [13], the Court emphasised that a judicial change in the rules governing the execution of a sentence, applied retroactively, may breach Article 7 where it produces consequences that could not reasonably have been foreseen by the convicted person. The judgment shows that the requirement of foreseeability is not limited to the moment of criminalisation but also concerns the subsequent application of criminal and penal-execution rules where they affect the actual scope or duration of the punishment.

Similarly, in *Yüksel Yalçınkaya v. Türkiye* [14], the Court reaffirmed that judicial interpretation cannot lead to an unforeseeable extension of criminal liability. Courts may not, under the guise of interpretation, create or extend criminal liability in a manner that was not sufficiently identifiable in the applicable law at the time when the acts were committed. What the Court censures is not judicial interpretation as such, but its unforeseeable character and its departure from the reasonable meaning of the provision and from the constituent elements of the offence.

By contrast, in *Jidic v. Romania* [15], the Court held that judicial interpretation remains compatible with Article 7 where it is based on a genuine analysis of the applicable legal framework, is supported by coherent reasoning and falls within the limits of what could reasonably have been foreseen by the person concerned. This judgment confirms that Article 7 does not preclude the evolution of case-law, but only an evolution that unexpectedly and adversely alters the content of the criminal-law provision.

The case-law of the European Court of Human Rights, therefore, provides a framework for assessing the compatibility of the application of criminal law with the principle of legality. This framework is built around three elements: the existence of an accessible and sufficiently clear legal basis, the reasonably foreseeable character of judicial interpretation, and the prohibition of extending criminal liability through extensive interpretation or analogy to the detriment of the individual.

These criteria are particularly relevant for the Republic of Moldova, as they provide a concrete framework for assessing the quality of criminal-law provisions in national judicial practice. Only insofar as criminalisation and its interpretation comply with these requirements can criminal law function as a genuine guide to conduct and legitimately contribute to the prevention of crime.

V. The impact of unclear criminal-law provisions on crime prevention. The lack of clarity of a criminal-law provision primarily affects its ability to guide individual conduct and to ensure legal certainty. To the extent that a criminal-law provision is vague, ambiguous or contradictory, the addressees of the law cannot determine with sufficient certainty what conduct is prohibited and what legal consequences may arise from a breach of the law. In such circumstances, criminal law loses part of its capacity to function as a genuine standard of conduct, and individuals can no longer organise their behaviour by reference to stable and intelligible normative benchmarks.

Secondly, unclear criminal law encourages divergent interpretation in the process of law enforcement and broadens the sphere of discretion of the authorities called upon to apply it. Where the legal text is insufficiently precise, the same act may receive different legal classifications depending on the manner in which it is understood by criminal investigation authorities or by the courts. Such a situation undermines the uniform application of the law and reduces the individual's ability to foresee the legal consequences of his or her conduct.

A relevant example in the Republic of Moldova is provided by the case-law concerning the application of Article 166[1] of the Criminal Code on torture, inhuman or degrading

treatment. In the appeal in the interest of the law examined on 3 February 2022, the Supreme Court of Justice was called upon to address the non-uniform interpretation and application of these provisions in cases involving teaching staff. According to one line of case-law, teachers in public educational institutions could not be regarded as special subjects of criminal liability under Article 166[1] of the Criminal Code, on the ground that they did not act as public officials or as persons acting in an official capacity. According to a second line of case-law, the same professional category was recognised as capable of meeting the requirements of a special subject of the offence, on the basis that teaching staff exercise functions connected with the implementation of State policy in the field of education and have minors under their care and instruction.

This divergence in case-law illustrates the impact that an insufficiently clear criminal-law provision may have on the foreseeability of the application of criminal law. The ambiguity concerned, in essence, the scope of the phrase "any other person acting in an official capacity" and the question whether it included teaching staff. In the absence of a sufficiently precise legislative delimitation, the same provision allowed different outcomes to be reached in similar or closely related situations, thereby undermining legal certainty, reducing the ability of the addressees of the law to foresee the legal consequences of their conduct and weakening the conduct-guiding function of criminal law.

Paul Craig [17, p.63] argues that the rule of law serves to enable individuals to organise their lives and conduct in the knowledge of the legal consequences of their actions. He further notes that, in the absence of independent courts, legal certainty is undermined, since individuals can no longer have confidence that the law will be applied faithfully in accordance with both its letter and its spirit.

Lastly, the lack of clarity of criminal-law provisions weakens voluntary compliance with the requirements of the law and undermines public confidence in the administration of justice. Where the application of the law produces divergent or unforeseeable outcomes, State intervention may be perceived as unequal or arbitrary, thereby diminishing both the normative authority of criminal law and the individual's willingness to comply with it.

VI. Implications for Crime Prevention in the Republic of Moldova. The results of the analysis highlight the need for more rigorous criminal-law drafting in the Republic of Moldova. Criminal-law provisions must be drafted in a clear, coherent and sufficiently precise manner so as to enable the exact identification of prohibited conduct and to avoid overlaps or contradictions between legal provisions. In this regard, the requirements established by Law No.100/2017 on Normative Acts, concerning the clarity, coherence and predictability of regulation, cannot, in the field of criminal law, be regarded merely as rules of legislative drafting, but must be understood as a concrete expression of the principle of legality.

More specifically, high-quality criminal legislation requires the avoidance of the main forms of normative ambiguity. Interpretative difficulties may arise where general or evaluative notions such as "serious", "essential" or "considerable danger" are employed without being accompanied by clear delimitation criteria. Likewise, open-ended formulations, such as "other acts" or "in other ways", may unduly expand the scope of application of the provision, thereby undermining its foreseeability. At the same time, the lack of a precise delineation of the special subject of the offence or the existence of contradictions between provisions contributes to legal uncertainty and hampers the uniform application of the law.

These deficiencies have implications not only at the stage of legislative drafting, but

also in the process of law enforcement. In the absence of sufficiently clear provisions, criminal investigation authorities and courts are compelled to compensate, through interpretation, for the gaps or imprecision of the legal text. This situation may lead to different outcomes in similar cases and may cause the permissible limits of interpretation to be exceeded in criminal matters. Accordingly, compliance with the principle of legality does not consist solely in the existence of criminal-law provisions but also requires their application in a coherent and foreseeable manner.

In Judgment No.22/2018 [18], the Constitutional Court held that the phrase "serious consequences" used in Article 328(3)(d) of the Criminal Code was not defined by law and was not accompanied by substantive criteria capable of delimiting its content. In the absence of such benchmarks, the application of the aggravating circumstance was left to the discretion of the law-enforcement and judicial authorities, which led to inconsistent practice and created the risk of extensive interpretation to the detriment of the individual. Therefore, the issue does not lie in the need to aggravate criminal liability as such, but in the obligation of the legislature to formulate the qualifying element in an explicit, clear and sufficiently precise manner.

The alignment of legislation and national practice with the standards developed in the case-law of the European Court of Human Rights and of the Constitutional Court must be regarded as an essential condition of the rule of law. At the same time, it is necessary to strengthen the professional training of judges, prosecutors and other legal practitioners, particularly with regard to the requirements deriving from Article 7 of the Convention. Lastly, the interpretation of the law must be carried out with caution in order to avoid transforming it into an instrument for the indirect expansion of criminal liability.

Conclusions. The principle of legality constitutes the essential legal framework within which criminal law can legitimately fulfill its preventive function. However, crime prevention cannot be achieved solely through the mere formal expansion of criminal prohibitions. It also requires that such prohibitions be drafted with sufficient precision to allow individuals to ascertain the limits of permissible conduct and the consequences arising from a breach of the law.

For the Republic of Moldova, the research findings highlight the need for increased attention to the quality of criminal-law provisions, both at the stage of legislative drafting and in the processes of legal interpretation and application. A clear and foreseeable criminal law enhances legal certainty, fosters consistency in judicial practice and limits the risk of arbitrariness, thereby contributing to the practical effectiveness of crime prevention policy.

Bibliographical references

1. Pîrău E. The principle of legality in criminal law and the case-law of the European Court of Human Rights. In: National Law Review, 2024, No.2 (252).
2. European Convention on Human Rights. Available: https://www.echr.coe.int/documents/d/echr/convention_ron (accessed 10.04.2026).
3. Criminal Code of the Republic of Moldova No.985-XV of 18 April 2002. In: Official Gazette of the Republic of Moldova, 2009, no. 72–74, art. 195.
4. Gladchi Gh. Criminal Law. General Part. 2nd ed. revised and supplemented. Chișinău: Print-Caro, 2022.
5. Constitution of the Republic of Moldova No.1 of 29 July 1994. In: Official Gazette of the Republic of Moldova, 2024, No.466, Art.635.
6. Fuller L.L. The Morality of Law. Revised edition. New Haven; London: Yale University Press, 1969.

7. Packer H.L. The Limits of the Criminal Sanction. Stanford, California: Stanford University Press, 1999.
8. Constitutional Court of the Republic of Moldova. Judgment No.27 of 21 September 2017 on the exception of unconstitutionality of certain provisions of Article 109(1) of the Criminal Code (limitation of reconciliation in criminal cases) (Referral No.48g/2017). In: Official Gazette of the Republic of Moldova, 2017, No.364-370, Art.96.
9. Constitutional Court of the Republic of Moldova. Judgment No.2 of 30 January 2018 on the exception of unconstitutionality of certain provisions of Article 10 point 4 of Law No.845-XII of 3 January 1992 on entrepreneurship and enterprises (Referral No.154g/2017). In: Official Gazette of the Republic of Moldova, 2018, No.108-112, Art. 54.
10. Law No.100 of 22 December 2017 on normative acts. In: Official Gazette of the Republic of Moldova, 2018, No.7-17, Art.34.
11. Guide on Article 7 of the European Convention on Human Rights: No punishment without law. Updated on 31 August 2025. Available: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_7_eng (accessed 02.04.2026).
12. European Court of Human Rights. Tristan v. the Republic of Moldova, Application No.13451/15. Judgment of 4 July 2023. Strasbourg, 2023.
13. European Court of Human Rights. Del Río Prada v. Spain, Application No.42750/09. Judgment of 21 October 2013. Strasbourg, 2013. Available: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-127697%22]} (accessed 01.02.2026).
14. European Court of Human Rights, Grand Chamber. Yüksel Yalçınkaya v. Türkiye, Application No.15669/20. Judgment of 26 September 2023. Strasbourg, 2023. Available: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-227636%22]} (accessed 03.07.2024).
15. European Court of Human Rights. Jidic v. Romania, Application No.45776/16. Judgment of 18 February 2020. Strasbourg, 2020. Available: https://hudoc.echr.coe.int/eng?i=001-201348 (accessed 19.02.2026).
16. Supreme Court of Justice of the Republic of Moldova. Plenum of the Criminal Chamber, Decision No.4-1ril-3/2021 of 3 February 2022, concerning the interpretation and application of Article 166¹ of the Criminal Code. Available: https://jurisprudenta.csj.md/search_interes_lege.php?id=19 (accessed: 24.02.2026).
17. CRAIG Paul. The Rule of Law: National, International and Regional Dimensions. In: FAEDDA, Barbara, ed. The Rule of Law: Cases, Strategies, and Interpretations. Vicenza: Ronzani Edizioni Scientifiche, 2021, pp.61-65. Available: https://ora.ox.ac.uk/objects/uuid:a0ef37de-cf9e-487b-aaf4-ffa56844e2f4/files/shm50ts95x (accessed 10.02.2026).
18. Constitutional Court of the Republic of Moldova. Judgment No.22 of 1 October 2018 on the Exception of Unconstitutionality of Article 328(3)(d) of the Criminal Code (Referral No.94g/2018). In: Official Gazette of the Republic of Moldova, 2018, No.416-422, Art.146.

CZU 343.352(478) **DOI: https://doi.org/10.5281/zenodo.20824233**

INFLUENCE PEDDLING: A CRITICAL ANALYSIS OF THE REPUBLIC OF MOLDOVA CRIMINAL LAW REGULATIONS IN THE CONTEXT OF EUROPEAN HARMONIZATION

Vitalie MUNTEAN,
PhD Student,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Senior Investigating Officer,
National Investigations Inspectorate, General Police Inspectorate,
Republic of Moldova
ORCID: 0009-0001-6567-5223

Abstract

This study analyzes the regulation of the offense of influence peddling in the criminal legislation of the Republic of Moldova, focusing on the amendments made in 2024 and the degree of harmonization with international and European standards in the field of combating corruption.

The research analyses the constituent elements of the offense under Article 326 of the Criminal Code of the Republic of Moldova, identifying interpretative and practical difficulties in judicial practice. The study includes a comparative analysis with the regulations in Romania and other EU Member States, as well as with the provisions of international conventions in the field. Gaps in the current normative framework are identified and proposals are formulated for optimizing the mechanism of criminal liability in cases of influence peddling, including in a cross-border context.

***Keywords**: influence peddling, corruption, criminal liability, public official, real or imaginary influence, extended confiscation, European harmonization.*

TRAFICUL DE INFLUENȚĂ: O ANALIZĂ CRITICĂ A REGLEMENTĂRILOR JURIDICO-PENALE DIN REPUBLICA MOLDOVA ÎN CONTEXTUL ARMONIZĂRII EUROPENE

Abstract

Prezentul studiu analizează reglementarea infracțiunii de trafic de influență în legislația penală a Republicii Moldova, cu accent pe modificările operate în anul 2024 și pe gradul de armonizare cu standardele internaționale și europene în materie de combatere a corupției. Cercetarea examinează elemente constitutive ale infracțiunii prevăzute la Art. 326 din Codul penal al Republicii Moldova, identificând dificultățile de interpretare și aplicare în practica judiciară.

Studiul include o analiză comparativă cu reglementările normative din România și din alte state membre ale Uniunii Eropene, precum și a prevederilor convențiilor internaționale în domeniu. Sunt identificate lacune ale cadrului normativ actual și sunt formulate propuneri de lege ferenda pentru optimizarea mecanismului de tragere la răspundere penală pentru traficul de influență, inclusiv în context transfrontalier.

***Cuvinte-cheie**: trafic de influență, corupție, răspundere penală, funcționar public, influență reală sau imaginară, confiscare extinsă, armonizare europeană.*

Introduction. Corruption represents one of the gravest threats to economic development and to citizens› trust in state institutions. In the Republic of Moldova, the phenomenon of corruption has profoundly affected the quality of implementing the reforms necessary for the country›s modernization and European integration. From this perspective, criminal policy plays an essential role within the overall set of anti-corruption measures, and the criminalization of acts of corruption must meet international standards and provide effective tools for combating these criminal manifestations [5; 6; 7].

Influence peddling occupies a special place in the system of corruption offenses, representing a form of corrupting the decision-making circuit through the involvement of an intermediary who claims that they can influence the decision of a public official [12]. As specialty doctrine has emphasized, this offense sanctions the compromising of the impartiality of public authorities and the trading of real or presumed influence over public officials [12, p.345].

It is no coincidence that, in 2024, the body of criminal law norms regarding liability for corruption offenses in the Republic of Moldova underwent modernization, in the context of commitments undertaken through the Association Agreement with the European Union [5] and recommendations from relevant international bodies [8].

The present study proposes an in-depth criminal law investigation of the offense of influence peddling, with the following specific objectives: clarifying the evolution of national and international regulations in the matter; analyzing the constituent elements of the offense provided in Art. 326 of the Criminal Code of the Republic of Moldova (hereinafter CC RM) [1]; examining national judicial practice and identifying difficulties of interpretation; conducting a comparative study with the criminal laws of other states, particularly Romania [2]; formulating *lege ferenda* proposals for improving the existing legal framework.

Discussions and results obtained. The offense of influence peddling has undergone changes in the legislation of the Republic of Moldova, reflecting the constant concern of the legislator to adapt the normative framework to international standards and the dynamics of criminal phenomena [12]. Currently, the act is criminalized in Art. 326 of the Criminal Code of the Republic of Moldova [1], and in 2024 significant amendments were made concerning both the objective element and the sanctioning regime.

The evolution of the regulation has been decisively influenced by the international commitments undertaken by the Republic of Moldova, particularly through the ratification of the Criminal Law Convention on Corruption (Strasbourg, 1999) [6] and the United Nations Convention against Corruption (UNCAC, 2003) [7]. These international instruments impose on States Parties the obligation to criminalize influence peddling in domestic law and to ensure effective, proportionate, and dissuasive sanctions [6, Art.12; 7, Art.18].

In Romanian doctrine, it has been held that the offense of influence peddling presupposes the cumulative fulfillment of several conditions, among which: the existence of real or apparent influence over a public official, the promise to induce the official to adopt a certain conduct, as well as the demanding, receiving, or accepting the promise of money or other benefits [9]. These elements are, in broad terms, also found in the regulation in the Republic of Moldova, but national particularities require a detailed analysis [12].

The Generic Legal Object of the offense of influence peddling consists of social relations relating to the proper conduct of activity in the public sphere, the integrity of public officials, and the prestige of public authorities [12, p.347]. Regarding the special legal object, the offense has a dual structure, protecting *principally* social relations concerning

the correct formation of public decision-making acts, and *subsidiarily* public trust in the impartiality of the administration. It is noteworthy that, unlike bribe-taking where the public official is the perpetrator, in the case of influence peddling the *moral prejudice caused to the image of public authority is potentiated by speculation about "imaginary influence"* – which transforms this offense into a tool for combating apparent corruption, not just real corruption [13, p.210].

The Material Object of the offense consists of the money, valuables, goods, or any other benefits that are the subject of trading influence [2]. According to Art. 291 para. (2) of the Romanian Criminal Code, these goods are subject to confiscation, and if they can no longer be confiscated, confiscation by equivalent is ordered, a measure that ensures the dissuasive character of the sanction. The victim is the state, as the holder of the protected public interests, and in a narrow sense it may be the public authority, public institution, or legal entity within which the public official targeted by the influence carries out their activity [13, p.215].

The Objective Element. The material element of the offense of influence peddling consists of the alternative actions of: a) demanding; b) receiving; c) accepting the promise of money, goods, or other benefits [2]. These actions may be carried out directly by the perpetrator or indirectly, through other persons, as well as for oneself or for another [12, p.350].

An essential requirement of the objective element is the perpetrator's quality as a person who *has influence* or *lets it be believed that they have influence* over a public official [2]. Thus, the legislator opted for a broad configuration of the active subject, including both the situation of real influence and that of imaginary (simulated) influence. As has been noted in specialized literature, this regulation also covers the hypothesis where the person boasts of having connections with an official or does not deny the statements of others regarding the existence of such influence [10].

The perpetrator's promise aims at inducing the public official to perform, not to perform, to expedite, or to delay the performance of an act within their official duties, or to perform an act contrary to these duties [2]. It is important to underline that, for the offense to exist, it is not necessary that the perpetrator actually exercised their influence or that the targeted act was performed. The offense is consummated at the moment of demanding, receiving, or accepting the promise, regardless of the subsequent execution of the promise [12, p.353].

In Romanian judicial practice, it has been held that it is irrelevant whether the perpetrator indicated or not the name of the public official over whom they have influence, it being sufficient to have determined the interested person solely through the quality of the targeted official [10]. This interpretation is also pertinent for judicial practice in the Republic of Moldova, allowing the sanctioning of acts where the influence is described generically, but sufficiently to create the conviction that it can be exercised over a competent official.

The Subjective Element. Subjectively, the offense of influence peddling is committed with direct intent, qualified by purpose. The perpetrator aims to obtain money, goods, or other benefits for oneself or for another, in exchange for the promised influence over the public official. In the case of demanding, direct intent results from the very nature of this action, and in the case of receiving or accepting the promise, the perpetrator has the representation that they are receiving goods or accepting the promise in consideration of the influence they have or claim to have [12, p.355].

The Subject of the Offense is any criminally responsible natural person (who has

reached the age of 16, a general subject). Although influence peddling is frequently committed in the environment of public officials, this quality is not a *sine qua non* condition for retaining Art.326 CC RM. *An important distinction*: if the perpetrator is a public official and peddles influence over *another* official, the act remains influence peddling. If the public official demands money to exercise their *own* duties, the act will be classified as passive corruption (Art. 324 CC RM) [12, p.356].

Comparative Analysis with Romanian Legislation. The Romanian Criminal Code criminalizes influence peddling in Art. 291, with the following content: "*The demanding, receiving, or accepting the promise of money or other benefits, directly or indirectly, for oneself or for another, committed by a person who has influence or lets it be believed that they have influence over a public official and who promises that they will induce them to perform, not to perform, to expedite, or to delay the performance of an act within their official duties, or to perform an act contrary to these duties, shall be punished with imprisonment from 2 to 7 years*" [2].

We observe major similarities with the regulation in the Republic of Moldova, reflecting a common source of inspiration and legislative harmonization efforts in the European space. The main differences concern the sanctioning regime and the configuration of causes for non-punishment. Thus, Art. 292 of the Romanian Criminal Code provides that the perpetrator who gave money or other benefits for buying influence shall not be punished if they report the act before the criminal investigation body has been notified [2]. Similarly, in the criminal legislation of the Republic of Moldova, para. (4) of Article 326 CC RM provides: "The person who promised, offered, or gave goods or services listed in para. (1) is released from criminal liability if they were extorted from them or if the person self-denounced, not knowing that the criminal investigation bodies are aware of the offense they committed".

The essential difference lies in the threshold of application: while in Romania the report must be made *before the notification of the criminal investigation bodies*, in the Republic of Moldova the legal text conditions the release on the lack of knowledge that "*the criminal investigation bodies are aware of the offense*". This latter wording is *more restrictive and harder to prove in practice*, which reduces the incentive for proactive cooperation in the initial phases of the investigation – an aspect that merits review "*de lege ferenda*".

The Constitutional Court of Romania, through Decision No.95/2023, dismissed the exception of unconstitutionality of the provisions of Arts.291 and 292 of the Romanian Criminal Code, holding that the notions of "person who has influence" and "person who lets it be believed that they have influence" are sufficiently clear and foreseeable, and the theoretical and jurisprudential developments from the old regulation retain their validity [9].

From the practice of the Constitutional Court of the Republic of Moldova, Decision No.46 of 14 May 2024 concerning the inadmissibility of referral No.32g/2024 on the exception of unconstitutionality of certain provisions of Article 326 of the Criminal Code (influence peddling) must be highlighted. By the aforementioned decision, the Court decided that: "The referral regarding the exception of unconstitutionality of the text 'followed by the promised influence or the obtaining of the pursued result' in Article 326 para. (2) let. d) of the Criminal Code, as well as of the provisions of Article 326 of the Criminal Code, raised by lawyers Ilie Gîlca and Mihai Garaba, in the interests of Ms. L. G., in case No.1-1332/2022, pending before the Chișinău Court, Buiucani seat, is declared inadmissible".

Relation to International Standards. The Criminal Law Convention on Corruption (Strasbourg, 1999) provides in Article 12 the obligation of States Parties to criminalize influence peddling, defined as "*the promising, offering, or giving, directly or indirectly,*

of any undue advantage to a person who asserts or confirms that s/he is able to exert influence over the decision-making of a public official, in exchange for the exercise of such influence" [6]. Furthermore, the United Nations Convention against Corruption (UNCAC) recommends that States Parties criminalize influence peddling, without however imposing a mandatory obligation in this regard [7, Art.18].

European Directives on combating corruption, although they do not directly target influence peddling, impose high standards of integrity in public administration and protection of the financial interests of the European Union [15]. In the context of the Moldova-EU Association Agreement [5], the Republic of Moldova has assumed the obligation to gradually align its legislation with the EU acquits, including in the field of combating corruption.

Difficulties in Judicial Practice. Judicial practice in the Republic of Moldova reveals a series of difficulties in applying Art.326 CC RM [14]. Among the most frequent problems are:

a) *Proof of real influence or its appearance*: it is often difficult to prove that the perpetrator had the real possibility to influence the official or, in the case of simulated influence, that they created a credible appearance in this regard [12, p.360].

b) *Delimitation from other offenses*: especially from bribe-taking (Art. 324 CC RM) and abuse of power or abuse of office (Art. 327 CC RM). The main distinguishing criterion is the perpetrator's quality as an intermediary and the fact that they do not directly exercise the targeted service duties [12, p.362].

c) *The problem of preparatory acts and attempt*: since the offense is consummated at the moment of the promise to intervene before an official, it is difficult to establish the boundaries between preparatory acts (non-punishable) and attempt [13, p.220].

d) *Evidence in cross-border offenses*: in the context of globalization, many acts of influence peddling involve foreign elements (perpetrators established abroad, goods transferred to offshore accounts, public officials from different states), which raises complex issues of international judicial cooperation [8, p.78].

Conclusion. The research undertaken within this study reveals that the regulation of criminal liability for corruption offenses in the Republic of Moldova has registered significant progress, with an indirect impact also on the applicability of Art. 326 CC RM. These amendments reflect the legislator's concern to adapt the normative framework to international standards and the dynamics of the criminal phenomenon, but the critical analysis carried out demonstrates that there are still multiple aspects that require improvement, both in terms of the content of the incrimination norm and the mechanisms for effective application.

In terms of criminal law theory, the study confirms the structural complexity of the offense of influence peddling, which involves a dual nature: on the one hand, it protects social relations concerning the integrity of public officials and the correctness of the decision-making process, and on the other hand, it sanctions intermediary behaviors that compromise citizens' trust in the act of authority [12; 13]. The broad configuration of the objective element, which includes both real and imaginary influence, represents an adequate legislative solution, as it also covers hypotheses where the perpetrator exploits appearances to obtain undue benefits. However, the lack of clear criteria for evaluating the existence of influence generates difficulties in judicial practice, requiring the intervention of the legislator or the Supreme Court for uniformity of interpretations [14].

The comparative analysis with Romanian legislation [1] and with European standards [6; 7; 15] highlights an evident legislative convergence, but also nuances in the sanc-

tioning regime that may influence the efficiency of combating the phenomenon. Contrary to a mistaken perception, both legislations provide a special cause for non-punishment/ mitigation for the whistleblower (Art. 326 para. (4) CC RM vs. Art. 292 Romanian CC). *The essential difference lies in the threshold of application*: while in Romania the report must be made *before the notification of the criminal investigation bodies*, in the Republic of Moldova the legal text conditions the release on the lack of knowledge that "*the criminal investigation bodies are aware of the offense*". This latter wording is more restrictive and harder to prove in practice, which reduces the incentive for proactive cooperation.

From the perspective of the impact on public security, influence peddling should not be viewed in isolation but as part of a complex criminal ecosystem that includes money laundering [4], tax evasion, and high-level corruption [8]. In a cross-border context, these offenses take on a special dimension, involving transfers of funds to jurisdictions with preferential tax regimes, the use of offshore companies, and opaque corporate structures to conceal beneficial owners. The Financial Action Task Force (FATF) Mutual Evaluation Report of 2023 [8] draws attention to the vulnerabilities of the Republic of Moldova in this area and recommends strengthening mechanisms for international cooperation and automatic exchange of information.

A gap identified following the comparative analysis and correlation with FATF [8] and UNCAC [7] standards consists of the lack of an explicit aggravating circumstance for acts involving a systemic foreign elements (e.g., influence peddled over an international official or the use of offshore jurisdictions for receiving benefits). Although Art. 326 para. (3) provides for the liability of the legal person, the mechanism of extended confiscation remains underutilized in Moldovan judicial practice in cases of influence peddling.

De Lege Ferenda Proposals:

1. **Textual Harmonization with Art. 12 of the Strasbourg Convention**: Introducing explicitly into the text of Art. 326 CC RM the phrase "*directly or indirectly*" in relation to the action of influencing, to unequivocally cover corruption schemes, including those with a transnational dimension, in which the perpetrator claims to be able to influence a foreign public official or an official of an international organization.
2. **Reevaluation of the Cause for Impunity**: Amending para. (4) Art. 326 CC RM to grant the benefit of release from criminal liability also in the situation where the report takes place *before the commencement of criminal prosecution*, regardless of whether the law enforcement body knew or did not know about the commission of the act (the Romanian model). This amendment would exponentially increase the number of self-reports and enhance the efficiency of evidence in mediated corruption cases.

Finally, the harmonization of the legislation of the Republic of Moldova with European Union standards regarding influence peddling is not only an obligation arising from the Association Agreement [5], but an essential condition for consolidating the rule of law, increasing citizens' trust in justice, and ensuring a healthy investment climate. The prompt and effective implementation of the formulated recommendations, corroborated with corruption prevention efforts, can contribute decisively to reducing the negative impact of this phenomenon on national security and to accelerating the European path of the Republic of Moldova.

Bibliographical references

1. Codul Penal al Republicii Moldova, nr.985 din 18.04.2002. În: Monitorul Oficial al Republicii Moldova, nr.128-129, 13.09.2002, cu modificările ulterioare (inclusiv modificările din 2024).

2. Codul Penal al României. Legea nr.286/2009. În: Monitorul Oficial al României, nr.510 din 24 iulie 2009, cu modificările ulterioare.
3. Constituția Republicii Moldova, nr.1 din 29 iulie 1994. În: Monitorul Oficial al Republicii Moldova, nr.1 din 18.08.1994.
4. Legea nr.308 din 22.12.2017 privind prevenirea și combaterea spălării banilor și finanțării terorismului. În: Monitorul Oficial al Republicii Moldova, nr.58-66, 23.02.2018.
5. Acordul de Asociere între Republica Moldova și Uniunea Europeană, semnat la 27.06.2014. Ratificat prin Legea nr.112 din 02.07.2014. În: Monitorul Oficial al Republicii Moldova, nr.185-199 din 18.07.2014.
6. Convenția penală privind corupția (Strasbourg, 27 ianuarie 1999). Ratificată prin Legea nr.428-XV din 30.10.2003. În: Monitorul Oficial al Republicii Moldova, nr.237-240 din 14.11.2003.
7. Convenția Națiunilor Unite împotriva corupției (UNCAC – United Nations Convention against Corruption, 2003). Ratificată prin Legea nr.158-XVI din 06.07.2007. În: Monitorul Oficial al Republicii Moldova, nr.103-106, 20.07.2007.
8. Raportul Grupului de Acțiune Financiară Internațională (FATF – Financial Action Task Force) privind evaluarea mutuală a Republicii Moldova. Paris: FATF, 2023. 250 p. Disponibil: https://www.fatf-gafi.org/content/dam/fatf/documents/reports/MER-Moldova-2023.pdf.
9. Duțescu A.-L. Infracțiuni de corupție. Traficul de influență. Cumpărarea de influență. Constituționalitate. În: Juridice.ro, 21 august 2023. Disponibil: https://www.juridice.ro/.
10. Gîndac C. Traficul de influență. Art. 291 Cod penal. Disponibil: https://avocatcristiangindac.ro/trafic-de-influenta-2/.
11. Iliescu A. Traficul de influență: definiție și pedepse. Disponibil: https://avocatiliescu.ro/traficul-de-influenta-definitie-si-pedepse-art-291-cod-penal/ (accesat la 20.02.2026).
12. Brînza S., Stati V. Tratat de drept penal. Partea specială. Vol. II. Chișinău: Tipografia Centrală, 2015. 560 p.
13. Boroi A., Rusu I. Infracțiunile de corupție și de serviciu. București: Hamangiu, 2021. 450 p.
14. Programul național de integritate și anticorupție pentru anii 2024-2028, aprobat prin Hotărârea Parlamentului nr.442 din 28.12.2023.
15. Directiva (UE) 2018/843 a Parlamentului European și a Consiliului din 30.05.2018 de modificare a Directivei (UE) 2015/849 privind prevenirea utilizării sistemului financiar în scopul spălării banilor sau finanțării terorismului. În: Jurnalul Oficial al Uniunii Europene, L 156 din 19.06.2018.

CZU 343.2 DOI: https://doi.org/10.5281/zenodo.20824315

COMPARATIVE LEGAL ANALYSIS OF THE SOURCES OF CRIMINAL LAW IN FOREIGN COUNTRIES

Alexandru ZOSIM,
PhD, Associate Professor,
Criminal Law and Criminology Department,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-0423-8932

Abstract
The article analyzes the system of sources of criminal law in the Anglo-Saxon and Romano-Germanic legal traditions and mentions the tendencies in the formation of criminal law in certain states.
The topic of the article seems to be relevant, since such a study allows carrying out a wider – through contrast and comparison of existing regulations – study of the advantages and disadvantages of domestic experience in legal regulation and, if necessary, putting forward proposals for borrowing foreign countries' experience. The main specific legal methods are: the comparative legal method and the formal legal method. With regard to the practical plane, the conclusions of the article can become the basis for future changes in the Republic of Moldova.
Keywords: sources of criminal law, legal system, statute, judicial precedent, codified criminal law.

ANALIZA JURIDICO-COMPARATIVĂ A IZVOARELOR DREPTULUI PENAL DIN ȚĂRILE STRĂINE

Abstract
Prezentul articol analizează sistemul izvoarelor dreptului penal din state străine, acestea fiind examinate și caracterizate în contextul familiei de common law (dreptul anglo-saxon), al familiei de drept continental (dreptul romano-german) și al familiei dreptului religios (dreptul musulman). Abordarea comparativă a dreptului penal, inclusiv a izvoarelor acestuia, este necesară pentru elaborarea unor metode eficiente de combatere a criminalității, având în vedere atât experiența națională, cât și cea internațională.
Cuvinte-cheie: izvoarele dreptului penal, sistem juridic, statut, precedent judiciar, lege penală codificată.

Introduction. The criminal law of a state possesses its own particularities, which are determined by the form of government, national and historical development, religious concepts, and the level of legal culture.

The diversity of legal systems, including in the field of criminal-law regulation, allows us to establish the tendencies in the formation of criminal law in certain states, to determine the main sources of criminal law, and to identify the consequences of international cooperation and its influence on the formation of the criminal policies of states. At present, there is a tendency toward the harmonization of legal systems, as a result of which certain sources of criminal law from one legal system are also used in other legal systems.

Within the framework of a comparative legal analysis of the sources of criminal law in foreign countries, we shall characterize these sources and examine them in the context of the common law family — Anglo-Saxon law, the continental law family — Romano-Ger-

manic law, and the religious law family — Islamic law.

The comparative approach to criminal law, including the sources of criminal law, is necessary for the development of methods for combating crime, taking into account both national and international experience.

These considerations have predetermined the choice of the research subject. The study of any legal system must begin with the examination of its sources. By source is understood the form of expression of legal norms.

Methods and materials applied. In the process of the respective investigation, the comparative method of study was used. In addition to the comparative method, a series of other methods were also applied, such as: the method of logical analysis, logical interpretation, classification, etc.

Discussions and result obtained. It is generally unanimously accepted that the main sources of law are the normative legal act, legal precedent, legal custom, and the contract.

From a historical point of view, the division of law into statutory law and case law has taken shape. The system and structure of the sources of law, as well as the form of expression of basic legal concepts, depend on the manner in which criminal provisions are expressed in normative acts or in court decisions concerning specific cases.

The normative legal act is generally accepted and is considered the most convenient source of law. In the sphere of criminal-law regulation, the main normative legal act is the Criminal Code. First, in the traditional Criminal Code, the General Part and the Special Part are distinguished. Second, the basic principles of criminal law are established. Third, specific categories of offences are characterized and the sanctions for committing them are determined. The Criminal Code is considered a source of criminal law in France, Germany, and the USA. The absence of a codified legal act is associated with the historical development of the English legal system — England and Wales.

A particularly important source of criminal law in foreign countries is constitutional legislation. In particular, the Constitutions of France, the USA, and Germany contain criminal-law norms. For judicial practice in the USA, a direct reference to constitutional norms in the reasoning of a court judgment may serve as a norm of criminal law. However, the uncodified constitution of the United Kingdom does not exclude the role of other acts of constitutional importance, for example, The Bill of Rights, in defining the principles of criminal law.

The sources of criminal law in foreign countries may also include doctrinal works in the field of criminal law. We note that, in countries where legislation is codified to the maximum extent, references to such sources are absent — France and Germany — whereas in countries where judicial precedent is predominant, references to extensive scholarly works of jurists are recognized as a norm and, therefore, are regarded as a source of criminal law — England and the USA. English law may be viewed as a set of rules based on the old common law of England, modified and developed through authoritative decisions of courts throughout history and significantly expanded through legislative acts of Parliament.

The main sources of law in the common law family — the Anglo-American type of the criminal-law family — are statutes, namely parliamentary legislation, and judicial precedents. England is the homeland of common law. The specific feature of English criminal law consists in the absence of a single codified criminal law. However, there is a significant number of statutes, whose role has recently increased. The role of judicial precedents as sources of criminal law in England remains relevant. Judicial precedent is understood as a court decision in a specific criminal case, which is binding upon the respective court and the lower courts with regard to the interpretation of the principles and rules of common law. At present, in English jurisprudence, each court is obliged to follow the decision of a higher court in the hierarchy, while courts of appeal are bound by their previous decisions.

There is an exception to this rule. The House of Lords, since 1966, has had the right to modify judicial practice where necessary. In addition, higher courts have the right to annul the decision of a lower court, as well as, in certain cases, their own previous decision. Any legal norm, including judicial precedent, may be modified by an Act of Parliament.

Over several centuries, court decisions in criminal cases were published in judicial reports. Today, the best-known and most authoritative are the English judicial reports, which are published weekly [1, p.109-111].

In specialized literature, among the sources of common law, including English criminal law, the works of renowned jurists are noted; at present, they do not have the value of a source of law, yet they still possess significant authority. When analyzing the sources of criminal law in the common law family, contemporary guides must be taken into consideration, for example, W. Blackstone's Commentaries on the Laws of England, published in 1765. This work is frequently referred to as an authoritative source [3].

The main sources of criminal law in the common law family also include statutes, or statutory law. There is a large number of statutes — over 8,000 — which contain rules concerning the criminal liability of natural and legal persons. In general, legislative acts in the field of criminal law regulate liability for specific categories of offences. In this context, the basic principles of criminal liability continue to be based on the rules of common law.

It is noteworthy that, alongside modern statutes, old laws continue to exist, such as the Treason Act of 1351.

The official publication of legislative acts is carried out by the King's Printer, either in the form of separate acts or in the form of an annual collection of Acts of Parliament. With regard to the territorial application of the law, the presumption is used that an Act of Parliament applies throughout the entire territory of the United Kingdom, unless the act itself provides otherwise.

However, sometimes an act may specify that its provisions do not apply on the territory of Scotland or Northern Ireland. There are also cases in which the applicability of a law extends beyond the territorial borders of the United Kingdom, for example, in the case of legislation on combating terrorism. According to the rules on the temporal application of the law, it enters into force from the date of Royal Assent, unless the law provides for another date.

As a rule, if a law is clearly drafted, without ambiguous terminology, it does not require judicial interpretation. In other cases, in practice, its interpretation is necessary. In English criminal law, three methods — or approaches — of statutory interpretation are applied: the "literal" rule, the "golden" rule, and the "mischief" rule. Literal interpretation presupposes that the text contained in the law is interpreted word for word. If the law is drafted in such a way that two or more literal interpretations are possible, the court applies the interpretation that is the most consistent and leads to a logical result. In this case, the "golden" rule of interpretation is applied. According to the "mischief" rule, interpretation is reduced to correcting an error. For this interpretation, the law is read as a whole. In this process, the court carefully analyzes both the long title and the short title of the law. Provisions relating to criminal law are interpreted restrictively. If a law establishing criminal liability contains ambiguous or undefined terms, it must be interpreted in favor of the individual. From this rule derives the presumption that liability is excluded in the absence of guilt. The latter, according to a general rule, constitutes a mandatory element of the corpus delicti.

Alongside statutes, there also exists such a source of English criminal law as delegated legislation [2, pp.96-106]. Its advantage consists in the fact that it allows for the rapid adoption and amendment of regulations, without the need for approval by Parliament. Among the forms of delegated legislation, its superior form is distinguished: the "Order in

Council", by which laws are implemented. The "Order in Council" is issued by the government and sanctioned by the Privy Council. Delegated acts are published by His Majesty's Stationery Office in a special collection.

With reference to the continental legal family, it may be stated that law, in the broad sense, prevails over other sources of law and represents the basic source of criminal law. The norms of French criminal law are determined in the form of a system: first — constitutional and international norms; then — codified and uncodified criminal laws; and subordinate normative acts adopted by the bodies of executive power. In this context, the role of judicial precedent is limited. Nevertheless, the decisions of the Criminal Chamber of the Court of Cassation of France are of considerable importance for French criminal law. We note that constitutional norms as a source of criminal law include the constitutional act — the Declaration of the Rights of Man and of the Citizen of 1789 [4, p.576].

Undoubtedly, this act contains important principles of criminal law. For the first time, the principle was enshrined that "everything which is not prohibited by law may not be prevented, and no one may be compelled to do what the law does not require" (Art. 5). Another important principle established in the Declaration is that "no one may be accused, arrested, or detained except in the cases determined by law and in the form prescribed by it" (Art. 7). Also of essential significance is the principle prohibiting punishment otherwise than as provided by law, adopted prior to the commission of the offence and duly published in a lawful manner. The Declaration proclaims the principle of equality of all persons before the law. For the first time, the principle of the presumption of innocence was constitutionally recognized. At the same time, the Declaration excludes criminal liability solely for thoughts, opinions, or beliefs.

A significant source is the Constitution of the French Republic of 1958, which contains provisions directly related to criminal law. In particular, Article 17 of the Constitution stipulates that the right to grant pardons is conferred upon the President of the Republic. The Constitution also regulates matters concerning the criminal liability of the highest officials of the French Republic — the President and members of the Government. Moreover, it is specified that the President is responsible for actions carried out in the exercise of his duties, with the exception of high treason. Members of the Government may be held criminally liable during the period in which they exercise their functions.

Ratified international agreements and treaties, as a source of law, have a force that exceeds the status of law only after their official publication, provided that each such agreement or treaty is also applied by the other party [5, p.74]. In this situation, the norms of international law must be placed "at the top" of the state's legal system, since their priority in relation to national legal norms is recognized. However, the situation is complex, because the existence of a norm of international law does not mean that it may be applied to the detriment of domestic national law, if it contradicts it. In this case, the contradictions must be evident and easily identifiable. Priority may be only temporary, since the terms of validity of the agreement are usually limited. Another issue is the fact that norms of international law do not contain sanctions, which means that it is necessary for the states that sign and ratify the agreement to adopt separate laws. Therefore, it would be more appropriate to suspend the application of domestic law that contradicts the norms of international law than to repeal those norms. In the event of a conflict between French law and an international treaty, it is proposed that the respective law be considered incompatible also with the norms of the Constitution of France, which constitutes a ground for its examination by the Constitutional Council, with a view to the subsequent repeal of that law [6, p.105]. In particular, international agreements apply in criminal law, being represented by treaties on extradition, legal assistance, and conventions on combating

certain types of offences. International treaties have influenced the inclusion of specific norms in the Criminal Code of France, as well as the harmonization of national criminal-law norms with agreements of international law [6, pp.105-139]. As a source of criminal law, the French Criminal Procedure Code of 1958 is traditionally considered, in which the most important principles of criminal law are enshrined. For example, the prohibition of being punished twice for the same act.

The next source of criminal law is considered to be the Code of Military Justice (1966). This Code contains norms concerning criminal liability for military offences. Criminal liability is also regulated by other sources of French criminal law, such as the Highway Code, the Labour Code, the Code of Residential and Non-Residential Real Property, the Intellectual Property Code, the Customs Code, the Tax Code, the Urban Planning Code, the Consumer Protection Code, and the Public Health Code.

In addition, criminal liability for certain offences is provided for in special laws, such as the Law on Commercial Companies (1966), the Law on Gambling (1983), the Law on the Activities of Credit Institutions and Their Supervision, and the Law on the Judicial Reorganization and Liquidation of Enterprises, which have not been included in any of the codes.

Subordinate normative acts should also be considered a source of criminal law. They appear in two main forms: in the form of subordinate normative acts having the force of law — for example, the Ordinance of the Provisional Government of France (1944), and Ordinance No.45-174 of 2 February 1945 on offences committed by minors — and in the form of acts that do not have the force of law, namely simple decrees adopted by the government.

Conclusion. In conclusion, we emphasize that, within the Anglo-Saxon legal family, the principal source of law is judicial precedent, while the essential role in the formation of law is attributed to the court. Procedural law has priority in relation to substantive criminal law. Statutory law is widely used, whereas legal customs constitute auxiliary, supplementary sources of law.

On the other hand, the continental legal family — the Romano-Germanic family — is characterized by a unified hierarchical system of sources of written law, in which normative acts play a dominant role. In this context, the role of codified acts is important, while subordinate normative acts — regulations, circulars, and instructions — have major significance. Legal custom and judicial precedent are considered auxiliary, supplementary sources of law. A special role is attributed to legal doctrine, which has developed the fundamental principles underlying the construction of this legal system.

Bibliographical refeences

1. Савельева О.А. Судебный прецедент как источник уголовного права в англо-саксонской правовой семье // Вестник Орловского государственного университета. 2008. № 3. С. 109-111.
2. Голованова Н.А. К вопросу о классификации источников современного английского уголовного права // Журнал российского права. 2014. № 11. С. 96-106.
3. Есаков Г.А. Источники уголовного права Англии // Lex Russica (Научные труды Московской государственной юридической академии). 2007. № 4. С. 759-784.
4. Козочкина И.Д. Уголовное право зарубежных государств. Общая часть: Учебное пособие. М.: Омега-Л, Институт международного права и экономики им. А.С. Грибоедова, 2003. 576 с.
5. Давид Р., Жоффре-Спинози К. Основные правовые системы современности: пер. с фр. В.А. Туманова. М.: Междунар. отношения, 1998. С. 74.
6. Конституции зарубежных государств: учеб. пособие. 2-е изд., исправ. и доп. М.: Изд-во БЕК, 1997. С. 105.

UDC 343.1/.2:340.12:007 **DOI: https://doi.org/10.5281/zenodo.20824460**

METROLOGICAL CONTROL OF AXIOLOGICAL CONSISTENCY AS A STRATEGY FOR PREVENTING CRIMES AGAINST JUSTICE

Yaroslav LANTINOV,
PhD, Associate Professor,
Department of Criminal Law and Criminology,
Kharkiv National University of Internal Affairs,
Ukraine
ORCID: 0000-0002-1858-6842

Abstract

Contemporary crime prevention doctrine in the field of justice remains captive to a legal-positivist paradigm that identifies the object of criminal law protection with the normal activity of judicial institutions. This paper argues that such an approach is theoretically inadequate: it mistakes the mechanism for the outcome it is meant to produce. The proposed reorientation reconceptualises justice not as institutional activity but as an emergent state of a system of activities — the state of axiological consistency of verification. This state is defined by three measurable parameters: informational purity (absence of entropic noise in the verification channel), algorithmic validity (genuine normative character of the legal algorithm applied), and logical coherence (consistency of outputs for equivalent inputs regardless of party status). Offences against justice are reconceptualised accordingly as acts of entropic intervention that degrade the system's capacity to achieve this state — not isolated violations but components of a process of systemic regression from democratic self-governance toward despotic control.

The paper derives a metrological prevention strategy organised around the monitoring and maintenance of these three parameters, and argues for a shift from activity metrics to state metrics as the operative standard of prevention success. The stakes of this prevention are argued to be existential rather than procedural: justice as axiological consistency is a necessary condition for the rule of law and for human flourishing.

Keywords: axiological consistency, metrological control, offences against justice, crime prevention, systemic regression, entropic intervention, state metrics.

CONTROLUL METROLOGIC AL CONSISTENȚEI AXIOLOGICE CA STRATEGIE DE PREVENIRE A INFRACȚIUNILOR ÎMPOTRIVA JUSTIȚIEI

Abstract

Doctrina contemporană de prevenire a criminalității în domeniul justiției rămâne captivă unei paradigme juridico-pozitiviste care identifică obiectul protecției dreptului penal cu activitatea normală a instituțiilor judiciare. Această lucrare susține că o astfel de abordare este teoretic inadecvată: aceasta confundă mecanismul cu rezultatul pe care este destinat să-l producă. Reorientarea propusă reconceptualizează justiția nu ca activitate instituțională, ci ca o stare emergentă a unui sistem de activități – starea de consistență axiologică a verificării. Această stare este definită prin trei parametri măsurabili: puritatea informațională (absența zgomotului entropic în canalul de verificare), validitatea algoritmică (caracterul normativ autentic al algoritmului juridic aplicat) și coerența logică (consistența rezultatelor pentru intrări echivalente, indiferent de statutul părților). Infracțiunile împotriva justiției sunt reconceptualizate în consecință ca acte de intervenție entropică care degradează capacitatea sistemului de a atinge această stare – nu ca încălcări izolate, ci ca componente ale unui proces de regresie sistemică de la autoguvernarea democratică spre controlul despotic.

Lucrarea dezvoltă o strategie de prevenție metrologică organizată în jurul monitorizării și menținerii acestor trei parametri și susține necesitatea unei treceri de la metricile activității la indicatorii de stat ca standard operativ al succesului prevenției. Se argumentează că mizele acestei prevenții sunt existențiale mai de-

grabă decât procedurale: justiția, înțeleasă ca consistență axiological, reprezină o condiție necesarăatât pentru statul de drept cât și pentru prosperitatea umană.

Cuvinte-cheie: consecvență axiologică, control metrologic, infracțiuni împotriva justiției, prevenirea criminalității, regresie sistemică, intervenție entropică, indicatori de stat.

Introduction. **The Paradigmatic Deficit of Contemporary Prevention Doctrine**. Contemporary crime prevention doctrine in the field of justice has long remained captive to a legal-positivist paradigm. Within this paradigm, prevention is conceived as a set of measures directed at protecting the «normal activity» of judicial and law enforcement bodies. The object of protection is identified with the institution — its authority, its procedures, its formal structure. This approach, however operationally convenient, conceals a fundamental theoretical deficit: it mistakes the vessel for its contents.

The legal-positivist method, being operationally closed, attempts to explain legal phenomena without departing from law as a self-referential system. As Luhmann observed, a legal system built on autopoietic self-reproduction — where each operation refers to a previous operation of the same system — loses its connection to social reality without cognitive openness to external systems of knowledge. This closure, as Gödel's incompleteness theorem suggests, renders the system incapable of full self-verification. The consequence for prevention doctrine is significant: a paradigm that defines the object of protection through the very categories it seeks to protect cannot generate genuinely new instruments of prevention. It can only reproduce existing frameworks under new labels.

The practical consequence of this paradigmatic deficit is visible in the persistent gap between formal reform and operational reality. Judicial systems may be restructured, procedural codes rewritten, and institutional names changed — yet the quality of legal signal produced by the system remains unaffected. This is not a failure of political will alone. It is a failure of conceptual apparatus: the doctrine lacks the categories necessary to identify what precisely is being destroyed when offences against justice are committed, and therefore lacks the tools to prevent it.

This paper proposes a reorientation of prevention doctrine — from the protection of institutional authority to the metrological control of axiological consistency. This reorientation draws on activity theory, cybernetic analysis, and the pragmatist criterion of truth to reconceptualise justice not as a procedure or an institution, but as an emergent state of a system of activities — a state that can be measured, monitored, and protected.

Methods and materials applied. The paper employs a theoretical-analytical method combining three intellectual traditions. The systemic-cybernetic approach — drawing on Wiener's cybernetics and Shannon's information theory — provides the framework for conceptualising justice as an information-processing system and offences against justice as entropic interventions. The activity-theoretical approach — drawing on the tradition of Leontiev and Engeström — provides the conceptual distinction between activity and emergent state. The pragmatist criterion of truth — following William James — provides the operationalisation standard: a concept is valid to the degree that it is capable of influencing real activity and generating falsifiable predictions. No empirical data collection was conducted; the materials of the study are the relevant theoretical sources in jurisprudence, cybernetics, systems theory, and philosophy of law. This paper develops arguments first presented in: Lantinov Ya. (2026). "*Justice as a State of Axiological Consistency: Reconceptualizing the Generic Object of Criminal Offenses*". Forum Prava, Ukraine, 85(1), p.27-34.

Discussions and results obtained. I. The Object of Protection Reconsidered: From

Activity to State. The foundational move required by this reorientation is a reconceptualisation of the generic object of criminal offences against justice. Under the prevailing doctrine — exemplified by the Ukrainian criminal law tradition — the generic object is defined as the «normal, statutorily regulated activity» of courts and the bodies that assist them. This definition, despite its apparent precision, contains an internal contradiction that Ukrainian scholarship has begun to identify but not yet resolved.

The contradiction may be stated simply: activity is not justice. Activity — the procedural sequence of investigation, adjudication, testimony, translation, and enforcement — is the technological process through which justice may or may not be achieved. It is the mechanism, not the outcome. A judge may follow every procedural rule with perfect formal compliance and still produce a decision that is manifestly unjust. Conversely, justice — understood as a substantive quality of the outcome — may be approximated through imperfect procedures if the core parameters of the verification process remain intact.

This distinction between activity and state requires a three-level analytical framework. The first level is the judicial system in its static aspect: the ensemble of institutions, personnel, infrastructure, and resources. This is the «hardware» of justice — necessary but not sufficient. The second level is judicial proceedings in their dynamic aspect: the cluster of specialised law-enforcement activities — investigation, adjudication, witnessing, translation, verification — that constitute the operational process. This is the «software» — the procedure. The third level is justice itself as a target state: the emergent property that arises when judicial proceedings ensure the axiological consistency of verification. This is the outcome — and it is this outcome, not the procedure, that constitutes the genuine object of criminal law protection.

The practical implication for prevention doctrine is direct: if the object of protection is the state rather than the activity, then prevention must be directed at the conditions that enable or disable the emergence of that state — not merely at the formal integrity of the procedure.

II. Axiological Consistency: Parameters and Metrological Standards. The concept of *axiological consistency* of verification synthesises three fundamental parameters of the system. Each parameter is operationally defined — that is, its violation is objectively identifiable — which satisfies the pragmatist criterion of truth advanced by William James: a concept is valid to the degree that it is operationally capable of influencing real activity.

The first parameter is *informational purity*: the absence of entropic noise in the verification process. Drawing on Shannon's mathematical theory of communication, we may describe judicial proceedings as an information channel through which factual data is transmitted, processed, and converted into a legal signal — the judicial decision. Any deliberate distortion of this channel — false testimony, fabrication of evidence, concealment of material circumstances — constitutes the introduction of entropic noise. The principle of «garbage in, garbage out» applies with full force: even a formally impeccable procedure will produce a corrupted output if the input data has been contaminated. Prevention, on this parameter, means minimising entropy at the point of data entry into the verification system.

The second parameter is *algorithmic validity*: the requirement that the legal algorithm through which decisions are made possesses genuine legal character. The law functions as an algorithm: it specifies the transformation rules by which factual inputs are converted into legal outputs. However, not every formally enacted statute qualifies as law in the substantive sense. If the algorithm violates human rights or contradicts the principles of a democratic and law-governed society, then even its technically correct appli-

cation cannot produce justice — it produces a technically precise error. As Fuller argued, an unjust law is not law in the relevant sense: *lex iniusta non est lex*. Prevention, on this parameter, means ensuring that the algorithms applied in judicial proceedings possess genuine normative validity — and resisting the use of formally enacted but substantively illegitimate rules under the guise of law.

The third parameter is *logical coherence*: the requirement that the system produce consistent outputs for equivalent inputs regardless of the subjective status of the parties. Any selective application of rules — where identical factual situations receive different legal treatment depending on who the parties are — constitutes a rupture of consistency. This rupture is not merely a procedural irregularity: it is a structural indicator of the transition from justice to despotic governance. A system that applies rules selectively is no longer a verification system — it is an instrument of domination. Prevention, on this parameter, means monitoring and protecting the stability of the system's response function.

Taken together, these three parameters constitute a metrological standard for justice — an operationalised set of criteria against which the actual functioning of judicial systems can be assessed. This is the analytical basis for what we term metrological control of axiological consistency.

III. Offences Against Justice as Systemic Regression. Once justice is reconceptualised as an emergent state defined by three measurable parameters, the nature of offences against justice becomes theoretically clarified in a way that the prevailing doctrine cannot achieve.

Under the prevailing doctrine, offences against justice appear as a heterogeneous collection of individual acts — bribery, rendering a knowingly unjust decision, false testimony, obstruction of proceedings — united primarily by their formal location in Chapter XVIII of the Criminal Code. Their systemic significance — their relationship to one another and to the broader social order — remains theoretically underspecified.

The proposed framework transforms this picture. Offences against justice are not isolated acts: they are acts of entropic intervention in a verification system. Each such act — whether it distorts the informational input, corrupts the legal algorithm, or ruptures the logical coherence of the system — degrades the capacity of the system to achieve the state of axiological consistency. In cybernetic terms, they introduce noise into the channel, corrupt the algorithm, or destabilise the response function.

The social significance of this degradation follows from a chain of determination that connects the state of justice to the broadest conditions of human flourishing. *Justice as a state of axiological consistency is a necessary condition for the rule of law*. The rule of law is a precondition for the functioning of society as a democratic and law-governed social formation. A democratic and law-governed social formation is the only known environment in which the final value — the beneficence of the social order for the human person — can be realised.

This chain means that offences against justice are not merely violations of procedural rules or attacks on institutional authority. They are acts of systemic regression — movements of the society away from democratic self-governance and toward despotic control. When justice loses axiological consistency, the rule of law is replaced by command-and-control governance. The autonomous person — the agent capable of independent goal-setting, resource coordination, and strategy correction — loses the guarantees of protection and is reduced to an object of despotic administration. The judicial system, stripped of its verification function, becomes a ritual instrument for the legitimation of arbitrariness.

This understanding fundamentally reframes the stakes of prevention. Preventing offences against justice is not a matter of protecting the dignity of the courtroom or the authority of the judicial robe. It is a matter of protecting the conditions under which autonomous persons can exist and flourish — the conditions under which society remains a dynamic space of free and predictable interaction among agents rather than a field of despotic subjugation.

IV. Metrological Control as a Prevention Strategy: Practical Implications. The reconceptualisation of justice as a measurable state and of offences against justice as acts of entropic intervention generates a correspondingly reconceptualised prevention strategy — one organised around metrological control rather than institutional protection.

Metrological control, in this context, means the systematic monitoring and maintenance of the three parameters of axiological consistency. It is prevention conceived not as the reactive suppression of individual violations but as the proactive maintenance of system integrity.

The first practical implication concerns the *monitoring of informational purity*. Prevention doctrine must develop instruments for identifying and filtering entropic interventions at the earliest possible stage of the verification process. This means institutional mechanisms for the detection of false testimony, fabricated evidence, and concealed circumstances — not merely as individual criminal acts but as signals of systemic degradation. An isolated false testimony is a criminal offence; a pattern of false testimony in a particular jurisdiction or case category is an indicator of systemic entropy that requires a systemic response.

The second practical implication concerns the *verification of legal algorithms*. Prevention must include mechanisms for the ongoing assessment of statutory provisions against the standards of axiological consistency. This is not merely constitutional review in the formal sense — it is a substantive test of whether the algorithms applied in judicial proceedings possess genuine normative validity. Where statutory provisions are found to generate systematically unjust outcomes despite formal procedural compliance, the prevention response must address the algorithm itself, not merely its application.

The third practical implication concerns the *protection of agent autonomy*. The logical coherence of the verification system depends on the independence of all participants in the system of activities — judges, prosecutors, defence counsel, witnesses, experts, translators. Any institutional pressure that compromises the independence of these participants constitutes a threat to logical coherence and therefore a threat to justice as a state. Prevention must therefore include robust mechanisms for the protection of participant autonomy against both external pressure and internal hierarchical subordination.

The fourth and perhaps most fundamental practical implication is a *reorientation of prevention metrics* — one that operationalises the conceptual shift announced at the outset of this paper. The prevailing doctrine measures prevention success through activity indicators: the number of prosecutions initiated, the number of convictions secured, the speed of case processing. These track the quantity of judicial procedure, not the quality of judicial outcome. They are, in the terms of this analysis, measures of the mechanism — not of the state it is meant to produce. The metrological approach proposed here requires the development of genuinely state-level indicators — measures that track the actual level of axiological consistency in the judicial system: the rate of evidentiary contamination, the consistency of legal application across comparable cases, the degree of participant independence. Only such indicators can provide a genuine basis for assessing whether prevention efforts are succeeding in protecting justice as a state rather than merely

maintaining the appearance of judicial activity.

Conclusions. This paper has argued for a fundamental reorientation of crime prevention doctrine in the field of justice — from the protection of institutional activity to the metrological control of axiological consistency.

The key propositions may be summarised as follows:

1. First, the generic object of criminal offences against justice is not the normal activity of judicial institutions but the capacity of the social system to achieve the state of justice — understood as the emergent property of a system of activities characterised by informational purity, algorithmic validity, and logical coherence.

2. Second, offences against justice are acts of entropic intervention that degrade this capacity — not isolated individual violations but components of a process of systemic regression from democratic self-governance to despotic control.

3. Third, effective prevention requires metrological control: the systematic monitoring and maintenance of the three parameters of axiological consistency, the development of state metrics rather than activity metrics, and the protection of participant autonomy as a structural safeguard of system integrity.

4. Fourth, the stakes of this prevention are not procedural but existential: justice as a state of axiological consistency is a necessary condition for the rule of law, which is in turn a necessary condition for the beneficence of the social order for the autonomous human person.

Effective prevention of offences against justice is therefore not a technical matter of criminal law enforcement. It is a strategic commitment to the conditions under which autonomous persons can exist, act, and flourish — a commitment to protecting the society as a dynamic space of free and predictable interaction against its regression into a field of despotic domination.

Bibliographical references

1. Fuller L.L. (1964). *The Morality of Law*. New Haven: Yale University Press.
2. James W. (1907). *Pragmatism*. New York: Longmans, Green and Co. Available: https://www.gutenberg.org/ebooks/5116.
3. Luhmann N. (2004). *Law as a Social System* (K. A. Ziegert, Trans.). Oxford: Oxford University Press.
4. North D. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.
5. Shannon C.E. (1948). A *mathematical theory of communication*. In: Bell System Technical Journal, 27(3), p.379-423.
6. Wiener N. (1954). *The Human Use of Human Beings: Cybernetics and Society* (2nd ed.). Boston: Houghton Mifflin.

CZU 343.34 **DOI: https://doi.org/10.5281/zenodo.20824539**

THE CORRELATION BETWEEN THE CONCEPTS OF "PUBLIC ORDER" AND "PUBLIC SECURITY" IN THE PROCESS OF THE LEGAL QUALIFICATION OF THE CRIME OF MASS RIOTS

Ana-Maria CHEPESTRU,
PhD in Law, Senior Officer,
Legal Directorate, Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-2988-8440

Abstract

In the presence of certain institutional shortcomings or dysfunctions, various criminal activities may emerge that are likely to affect the effective exercise of individuals' fundamental rights and freedoms.

At present, the issue of mass riots has acquired particular importance, since in most cases this offence is regarded as one of the serious forms of disturbance of public security. The offence of mass riots constitutes an unlawful act with a high degree of social danger, which directly affects the system of social relations and values related to public security. By its nature and the manner in which it is committed, it produces adverse consequences for public safety, thereby affecting social stability, public order, social cohesion, the normal functioning of state institutions, and the security of persons and their property. The disturbance of social balance generates significant risks for the harmonious development of the state in the economic, political, social, cultural and other fields. Ensuring public order and public security constitutes one of the fundamental priorities of the Republic of Moldova.

Keywords: social danger, offence, mass riots, public security, public order, interdependence, social cohesion.

CORELAȚIA DINTRE CONCEPTELE „ORDINE PUBLICĂ" ȘI „SECURITATE PUBLICĂ" ÎN PROCESUL DE CALIFICARE JURIDICĂ A INFRACȚIUNII DE DEZORDINI ÎN MASĂ

Abstract

În condițiile existenței unor carențe sau disfuncționalități sectoriale, se conturează diverse activități infracționale, susceptibile să afecteze exercitarea efectivă a drepturilor și libertăților fundamentale ale persoanei.

Actualmente, problematica dezordinilor în masă dobândește o importanță deosebită, întrucât de cele mai multe ori, această infracțiune este tratată ca una dintre formele grave de perturbare a securității publice. Infracțiunea de dezordini în masă constituie o faptă ilicită cu un grad sporit de pericol social, care aduce atingere în mod nemijlocit ansamblului relațiilor și valorilor sociale ce vizează securitatea publică. Prin natura și modalitățile sale de comitere, aceasta generează consecințe negative asupra climatului de siguranță colectivă, afectând stabilitatea socială, ordinea publică, coeziunea socială, funcționarea normală a instituțiilor statului, securitatea persoanelor și a bunurilor acestora etc. Tulburarea echilibrului social determină apariția unor riscuri substanțiale pentru evoluția armonioasă a statului în domeniul economic, politic, social, cultural etc. Asigurarea ordinii și securității publice se circumscrie sferei priorităților fundamentale ale statului Republica Moldova.

Cuvinte-cheie: pericol social, infracțiune, dezordini în masă, securitate publică, ordine publică, interdependență, coeziune socială.

Introduction. Chapter XIV, "Offences against Public Security and Public Order" of the Special Part of Criminal Code No.985 of 2002 (hereinafter – the Criminal Code) includes all offences whose generic legal object is represented by social relations concerning public security and public order. Accordingly, such offences directly infringe either public security or public order.

Given the placement of Article 285, which criminalises mass riots, within the Criminal Code, it is specified that the aforementioned offence infringes social values relating to public security. In this respect, in order to determine precisely the scope of the concept of "public security" we propose to elucidate the particular features and meanings of the notions of "public order" and "public security".

The importance of the subject addressed lies in the need for a rigorous conceptual delimitation between the notions of "public order" and "public security", as this distinction has direct implications for the legal classification of the offence of mass riots. The existence of divergent doctrinal approaches and imprecise formulations within the national regulatory framework accentuates the need for an in-depth analysis capable of clarifying the dividing lines between the two concepts and contributing to ensuring a uniform and foreseeable judicial practice consistent with the requirements of the principle of legality in criminal law.

Since Article 285 of the Criminal Code establishes this offence as an act infringing social values relating to public security, an unclear or inconsistent interpretation of the content of this legal value may generate significant difficulties in the application of the criminal-law provision. The legal classification of acts that may fall within the scope of the offence of mass riots inevitably presupposes the correct identification of the primary social value harmed, as well as the determination of its relationship with other related values protected by the criminal-law provision. In the absence of a uniform understanding of the notions of "public security" and "public order," there is a risk of non-uniform legal classifications, confusion with other similar offences, or even the unjustified application of the criminal-law provision in situations that do not reach the level of social danger specific to this offence.

Methods and materials applied. In the process of examining the topic addressed in this article, several national legal sources (laws and Government decisions), doctrinal sources (compendia, monographs, manuals, guides, abstracts, and scientific articles), as well as case-law were consulted in conjunction.

At the same time, in preparing this scientific article, several research methods were employed: (1) the method of literal interpretation, used to explain the lexical meaning of the relevant terms; (2) the systemic method, used to analyse the provisions of national legal acts in relation to the subject addressed; (3) the comparative method, used to compare various legal norms within the national normative framework; and (4) the deductive method, used to interpret the doctrinal meanings formulated in the course of researching the subject matter.

Discussions and results obtained. The elucidation and clarification of the conceptual content of the notions of "public security" and "public order" begin with a systematic analysis of the relevant national legal acts that expressly enshrine these concepts. The analysis of the normative framework constitutes a necessary first methodological step, as it allows for the identification of the legal meanings assigned by the legislator to the concepts of "public order" and "public security", highlights the manner in which they are regulated in national legislation, and reveals possible overlaps or terminological inconsistencies. Such an approach also provides an important premise for the subsequent doc-

trinal and jurisprudential analysis and contributes to grounding a coherent and uniform interpretation of the criminal-law provision criminalising mass riots.

Having regard to the placement of the offence of mass riots within the system of the Special Part of the Criminal Code, specifically within Chapter XIV, "Offences against Public Security and Public Order", it is essential to note the position of the authors Brînza S. and Stati V., who highlight the closer interconnections between the special legal objects of the offences provided for in that chapter, distinguishing the following three types thereof:

1. Offences against public security (Articles 278, 278[1], 279, 279[1], 279[2], 280, 281-286, 289, 289[1]-289[3], 295, 295[1] and 295[2]);
2. Offences against public security affecting the carrying out of specific types of activity (Articles 290-293, 296-298, 300, 301 and 301[1]);
3. Offences against public order (Articles 287, 288 and 302) [2, p. 226].

From another perspective, author Macari V. takes the view that the object of mass riots consists of public order, the life and health of the person, and the owner's property [6, p.323], an aspect with which we disagree, since, in the case of the offence of mass riots, public order cannot be analysed autonomously from public security, the latter having a broader content within which the notion of public order is also integrated, thus ensuring the cohesion and interdependence of a complex body of social values.

The notion of "public order" has been enshrined since the early modern period, being expressly regulated in the French Declaration of the Rights of Man and of the Citizen of 1789, which, in Article X, provided that no one may be held accountable for his or her opinions, even religious ones, provided that their manifestation does not disturb the public order established by law [9].

In this context, it may be inferred that public order is conceived as a legitimate legal limitation on the exercise of fundamental rights and freedoms, intended to ensure a balance between individual liberty and the general interests of society. This limitation does not extinguish such freedoms, but rather regulates them within a normative framework that guarantees social coexistence and stability, as well as respect for the essential values protected by law.

A recent normative act regulating the field of public order and security is Law No.249/2025 on the National Security of the Republic of Moldova, which, in Article 10(1), provides that public order and security represent the state of legality, stability and civic peace ensured by the public authorities and institutions that implement preventive and coercive measures to combat unlawful acts, protecting the life and integrity of persons, fundamental rights and freedoms, as well as property and public health, maintaining public safety, guaranteeing respect for the law and the efficient functioning of public authorities and institutions [14].

Also from the perspective of the normative framework, it is apparent that, in the content of Article 21 of Law No.320/2012 on Police Activity and the Status of the Police Officer, the legislator indicates the fields of "public order" and "public security" as two distinct, yet intrinsically connected, segments of activity, without establishing a conceptual delimitation between them. Indeed, that article expressly stipulates the duties of the police in the field of maintaining, ensuring and restoring public order and public security, and in the protection of the rights and legitimate interests of the person and the community [16].

The same thesis may also be supported by reference to the requirements of Article 2(3) of Law No.219/2018 on the General Inspectorate of Carabineers, which provides

that the General Inspectorate of Carabineers forms part of the national public order and security system and of the national defence system [15]. Such normative enshrinement highlights the interdependent nature of the notions of "public order" and "public security", these being configured by the legislator not as autonomous and isolated legal realities, but as convergent elements of a unified institutional framework aimed at ensuring the protection of the fundamental interests of society and the State.

Furthermore, another normative act supporting the idea set out above is the Regulation on the Organisation and Functioning of the Ministry of Internal Affairs, approved by Government Decision No.693/2017, which states in paragraph 6 subparagraph 1), that the Ministry of Internal Affairs performs the functions established by the Regulation in the field of public order and public security.

In the same vein, attention is drawn to the Public Order and Security Strategy for 2017-2020, approved by Government Decision No.354/2017, which, in paragraph 3 subparagraphs 1) and 2), defines the notions under consideration as follows:

1. Public Order: the component of the legal order expressing the state of effective functioning of the institutions of the rule of law, of respect for the fundamental rights and freedoms of citizens, and of public and private property, ensured through the necessary body of legal regulations, behavioural norms, social values and specific institutions, including for the restoration of disturbed balances [11];

2. Public Security: the state of confidence, peace and social cohesion, absence of dangers and threats concerning the life, liberty, welfare and prosperity of the population and the community, ensured through specific actions by the competent authorities [11].

At the same time, according to paragraph 16 of the National Programme on Public Order and Security, approved by Government Decision No.727/2025, public order and public security constitute essential foundations of a functional rule-of-law state, ensuring the necessary framework for the exercise of fundamental rights and freedoms, the protection of the person, communities and property, as well as the proper functioning of public institutions. The situation analysis explores the way in which concerns relating to public order and public security manifest themselves in the Republic of Moldova in various settings, from the domestic sphere, within the community and in public spaces, in specific contexts such as public events, the public space of the online environment, and up to the security area and critical infrastructure [10].

Under the same legal perspective, paragraph 8 of the Regulation on the Organisation and Functioning of the National Centre for Integrated Coordination of Public Order Actions, approved by Government Decision No.1206/2016, clarifies the notion of "public order" as the state of legality, balance and social peace through which the public security and personal security of individuals, communities and property, as well as public health and morality, are ensured, and which allows the exercise of the individual's fundamental rights and freedoms, as well as the effective functioning of institutions in a rule-of-law state [12].

From a jurisprudential perspective, an explanation of the concept of "public order" is also found in Ruling No.4 of 19 June 2006 of the Plenary of the Supreme Court of Justice of the Republic of Moldova on judicial practice in criminal cases concerning hooliganism, which, in paragraph 3, notes that public order means a body of social relations ensuring a peaceful environment of coexistence in society, the inviolability of the person and the integrity of property, as well as the normal activity of state and public institutions [13].

With regard to the connection between the concepts of "public security" and "public order", author Manea V. points out that not all authors correctly perceive the correla-

tion between public order and public security, considered as social values protected by criminal law [20, p.16].

From the opinion set out above, it may be concluded that the specialised literature contains multiple doctrinal views regarding the concepts under analysis, which attests to the existence of varied and, at times, divergent explanations. Thus, these may highlight elements of convergence between the notions, may emphasise the conceptual differences between them, or, in certain situations, may even generate contradictory opinions.

The same author, Manea V. considers that public security is the factual state created by legal rules, intended to ensure the most favourable conditions of coexistence for the community, such that the interests of the members of the community are shielded from any danger. Therefore, public security concerns the community as a whole (ut universi), unlike personal security, which concerns individuals taken separately (ut singuli) [7, p.80].

In a broad sense, author Chirița V. notes that public security includes several groups of social relations in the field of non-dangerous conditions for the life of society as a whole; public order; ecological security; the health of the population and the morality of society as a whole; the security of private, social or state interests in the course of carrying out various types of work; the security of private, social or state interests in the handling of objects dangerous to society; the security of private, social or state interests in the use of means of transport; and the security of private, social or state interests in the use of computerised information [4, p.56].

In a narrower sense, author Borodac A. explains that public security is a system of rules ensuring the protection of the most important values of the person, the material and spiritual values of society, the authority of official power, as well as the sovereignty and territorial inviolability of the country [1, p.399].

Likewise, author Cușnir V. considers that public security constitutes that part of internal security and that segment of national security which concerns the state of legal order, the protection of the population, public and private property, and the rights, freedoms and legitimate interests of the person against threats arising from within the country [17, p.14].

In another conceptual dimension, authors Brînza S., Ulianovschi X., Stati V. and others consider that public order is presented as the social value consisting of a peaceful environment of coexistence in society, the inviolability of the person and the integrity of property, as well as the normal activity of state and public institutions [3, p. 533].

Author Admiralova I.A. considers that public order, as a certain legal category, constitutes a system of public relations that arises and develops in public places in the process of interaction among persons, conditioned by the needs of society's development, whose legal regulation and other social regulations ensure the personal and public safety of persons, a calm living environment, and the coherence and rhythm of public life [23, p.254].

Consistently, author Zavatin V. remarks that public order may be understood as a legal and factual state that permits the achievement and maintenance of balance based on social consensus, necessary for the optimal functioning of the social whole under the conditions of the domestic legal regulations in force, with a view to promoting and affirming social progress in a democratic society [22, p.19].

Overall, Romanian legal literature considers the concept of "public order" to be one subordinate to the "legal order". The notion of public order marks the supremacy of rules protecting the general interests of society over conventional rules inspired by private interests [18, p. 111].

The notion of "public order" means the organisation and conduct of political, economic and social life within a State according to a body of generally binding rules and measures. Romanian public order is formed by the body of the fundamental legal principles of the Romanian State. From the perspective of international law, the notion of public order also includes the fundamental norms of the legal system of the court, which do not permit the application of foreign rules, although those rules would otherwise be competent pursuant to the court's conflict-of-laws rules [18, p.113].

From the perspective of societal organisation, it is considered that public order may also be viewed as a social order in which the citizen is not merely the beneficiary of rights and freedoms, but also of obligations, including those relating to the minimum requirements of life in society [21, p.81].

Public order is configured as a state of affairs accepted and required in society, regulated by law and aimed at ensuring respect for citizens' rights and freedoms. The extensive level of regulation and prosocial behaviour in the spirit of values specific to the nation lead to the protection and consolidation of the State. Reference to public order presupposes taking into account several elements linked to the regulation of the characteristics of the rule of law, in relation to which the issue also arises of the intervention of the competent bodies in order to prevent the breach of public order or maintain it [21, p.83].

With regard to the correlation between the two concepts, authors Chirița V. and Tihon V. indicate that public security is not identical to public order and, although the concepts are coherent with one another, neither can be absorbed by the other. Therefore, public security constitutes a non-dangerous, safe condition, whereas public order means the arrangement of things and acts on the basis of a series of rules and norms. Consequently, although both categories, public security and public order, being interdependent, contribute to ensuring the normal existence of society, like any component of the social mechanism, they nevertheless have a clearly established autonomy, each ensuring the harmless operation of its own sector of social welfare [5, p.16].

Most often, the concepts of "public order" and "public security" (in Romanian specialised literature, the term "public safety" is also used) are employed together, being closely interconnected and interdependent. The essence of this relationship is that both are intended to establish an adequate social order that satisfies the needs of citizens and society, while the violation of the norms will entail both the liability of the subjects concerned and State intervention [19, p.165].

From another perspective, author Kudelici A.V. advances the thesis that the notions of "public order" and "public security" are synonymous [8, p.15].

In this regard, we consider that the assimilation of the two concepts cannot be supported either normatively or doctrinally. The analysis of the national legal framework reveals clear delimitations between "public order" and "public security", each with distinct legal content, a specific object of protection, and its own safeguarding mechanisms. Similarly, the specialised literature emphasises that these notions operate at different functional levels and must not be confused.

Public security should therefore be understood as a comprehensive concept reflecting the overall state of societal protection against threats to life, personal integrity, property, and the functioning of state institutions. By contrast, public order constitutes only one component of this general state, concerning the body of rules governing social coexistence and compliance with behavioural norms in public spaces. Accordingly, public order falls within the broader concept of public security as an integral component; the

two notions are therefore neither identical nor equivalent.

Conclusions. In light of the foregoing, we conclude that, although public security and public order are interdependent and both serve to ensure the normal and balanced functioning of society, they do not entirely overlap. Each of these notions possesses well-defined conceptual and functional autonomy, guaranteeing the stable functioning of a particular segment of social life.

In the context of the offence of mass riots, public order cannot be analysed in isolation from public security, since the notion of public security, in its broad sense, encompasses the social value of "public order", thereby creating a functional interdependence and making an essential contribution to the maintenance of social equilibrium and stability.

Both the specialised literature and judicial practice consistently recognise that the offence of mass riots constitutes a criminal-law offence infringing public security. Nevertheless, despite its unanimous recognition at doctrinal and practical levels, this concept is not currently expressly enshrined in the Criminal Code.

In our view, public security constitutes a coherent body of rules and protective mechanisms concerning social relations aimed at guaranteeing and defending the fundamental rights and freedoms of an indeterminate circle of persons. It is achieved through establishing and maintaining an effective legal order, as well as through creating a stable, safe, and predictable social climate conducive to the undisturbed conduct of the activities of both natural and legal persons, while ensuring their normal conditions of existence and functioning.

Bibliographical references

1. Borodac A. Manual de drept penal. Partea specială cu modificările și completările până la 22.04.2004. Chișinău: Tipografia Centrală, 2004. 622 p. ISBN 9975-9788-7-8.
2. Brînza S., Stati V. Drept penal. Partea Specială: Compendiu. Chișinău: CEP USM, 2021. 370 p. ISBN 978-9975-158-47-3.
3. Brînza S., Ulianovschi X., Stati V., Țurcanu I., Grosu V. Drept penal. Partea generală. Volumul II. Chișinău: Cartier, 2005.
4. Chiriță V. Luarea de ostatici (Analiza juridico-penală și criminologică). Chișinău: Tipografia Academiei „Ștefan cel Mare" a MAI, 2011. 242 p. ISBN 978-9975-935-66-1.
5. Chiriță V., Tihon, V. Ghid privind calificarea infracțiunii de huliganism. Chișinău: Tipografia Academiei „Ștefan cel Mare" a MAI, 2024. 160 p.
6. Macari I. Dreptul penal al Republicii Moldova. Partea Specială. Chișinău: Centrul Ed. al USM, 2003. 509 p. ISBN 9975-70-247-3.
7. Manea V. Răspunderea penală pentru acțiunile care dezorganizează activitatea penitenciarelor. Material didactico-științific. Chișinău: CEP USM, 2010. 292 p. ISBN 978-9975-70-956-9.
8. Куделич А.В. Уголовно-правовая охрана общественного порядка в современной России: автореферат диссертации на соискание ученой степени доктора юридических наук. Москва, 2000. 15 с.
9. Declarația Franceză a drepturilor omului și cetățeanului, 1789. Disponibil:https://ro.wikipedia.org/wiki/Declara%C8%9Bia_drepturilor_omului_%C8%99i_ale_cet%C4%83%C8%9Beanului (accessed 02.03.2026).
10. Hotărârea Guvernului nr.727/2025 cu privire la aprobarea Programului național de ordine și securitate publică pentru anii 2026-2030. Disponibil: https://www.legis.md/cautare/getResults?doc_id=151809&lang=ro. (accessed 18.03.2026).

11. Hotărârea Guvernului nr.354/2017 cu privire la aprobarea Strategiei naționale de ordine și securitate publică pentru anii 2017-2020 și a Planului de acțiuni privind implementarea acesteia. Disponibil: https://www.legis.md/cautare/getResults?doc_id=123210&lang=ro. (accessed 23.02.2026).
12. Hotărârea Guvernului nr.1206/2016 cu privire la Centrul Național de Coordonare Integrată a Acțiunilor de Ordine Publică. Disponibil: https://www.legis.md/cautare/getResults?doc_id=147417&lang=ro (accessed 19.02.2026).
13. Hotărârea Plenului CSJ a Republicii Moldova cu privire la practica judiciară în cauzele penale despre huliganism, nr.4 din 19.06.2006. Disponibil: https://jurisprudenta.csj.md/search_hot_expl.php?id=249 (accessed 26.02.2026).
14. Legea nr.249/2025 privind securitatea națională a Republicii Moldova. Disponibil: https://www.legis.md/cautare/getResults?doc_id=150559&lang=ro (accessed 18.03.2026).
15. Legea nr.219/2018 cu privire la Inspectoratul General de Carabinieri. Disponibil: https://www.legis.md/cautare/getResults?doc_id=147979&lang=ro# (accessed 26.02.2026).
16. Legea nr.320/2012 cu privire la activitatea poliției și statutul polițistului. Disponibil: https://www.legis.md/cautare/getResults?doc_id=150487&lang=ro# (accessed 26.02.2026).
17. Cușnir V. Conceptul securității publice. În: „Poliția și Securitatea Publică": Materialele Conferinței științifico-practice din 09.12.2002. Chișinău: Acad. „Ștefan cel Mare", 2003. pp.14-17. ISBN 9975-930-82-4.
18. Deaconu Ș., Enache M. Ordinea publică în dreptul românesc. În: „Honorem Ioan Muraru, Despre Constituție în mileniul III". București: Hamangiu, 2019, pp.106-117. Disponibil: https://uspee.md/wp-content/uploads/2016/08/RND_nr_6.pdf (accessed 02.03.2026).
19. Erhan I. Fundamentele constituționale ale domeniului ordinii și securității publice. În: „State, security and human rights: in digital era", 8-9 decembrie 2022. Chișinău: Centrul Editorial-Poligrafic al Universității de Stat din Moldova, 2023, Vol. 1, pp.164-174. ISBN 978-9975-62-530-2.
20. Manea V. Delimitarea acțiunilor care dezorganizează activitatea penitenciarelor (art.286 C.pen.RM) de unele infracțiuni contra securității publice și ordinii publice. În: „Revista Națională de Drept", 2009, nr.6, pp.14-18. ISSN 1811-0770. Disponibil: https://uspee.md/wp-content/uploads/2016/08/RND_nr_6.pdf (accessed 01.03.2026).
21. Pișleag Ț. Ordinea publică – un concept juridic teritorial. În: „Revista Academiei de Științe ale Securității Naționale", 2017(2). Disponibil: https://ssrn.com/abstract=3429581 (accessed 02.03.2026).
22. Zavatin V. Securitatea publică: perspective legislative. În: „Poliția și Securitatea Publică": Materialele Conferinței științifico-practice din 09.12.2002. Chișinău: Acad. «Ștefan cel Mare», 2003, pp.17-19, 140 p. ISBN 9975-930-82-4.
23. Адмиралова И.А. Общественный порядок и права граждан. В: „Полицейская деятельность", № 3. DOI: 10.7256/2454-0692.2014.3.12362, Москва, 2014, сс.251-257. Available: https://nbpublish.com/library_get_pdf.php?id=29711 (accessed 03.03.2026).

CZU 343.54-053.2:004.8.056 **DOI: https://doi.org/10.5281/zenodo.20824669**

USER SAFETY AND THE PROTECTION OF MINORS IN THE DIGITAL AGE UNDER THE AI ACT AND THE DSA: IMPLICATIONS FOR THE LEGAL FRAMEWORK OF THE REPUBLIC OF MOLDOVA.

Andrei NASU,
Master of Law,
Academy of Economic Studies of Moldova (ASEM),
Legal Advisor, AO European Consumer Centre,
Republic of Moldova
ORCID: 0009-0002-2988-5095

Abstract

This paper examines the European legal framework on the protection of users and minors in the digital age through three complementary instruments of European Union law: Regulation (EU) 2024/1689 on artificial intelligence (the AI Act), Regulation (EU) 2022/2065 on digital services (the DSA), and Regulation (EU) 2016/679 on the protection of personal data (the GDPR).

The study starts from the specific vulnerability of minors in the online environment, supported by the 4C+1 conceptual framework of five risk categories (content, contact, conduct, consumer, and cross-cutting), and analyses the concrete safeguards established by the three regulations. It also looks at the working preventive mechanisms made available by the Court of Justice of the European Union, the European Data Protection Board, and the European Commission, including through the Guidelines on the protection of minors adopted under Article 28(1) of the DSA and the Commission's first preliminary decision against Meta of April 2026.

In the final part, the article assesses the state of legislative harmonisation of the Republic of Moldova in this field, in the context of the completion of the bilateral screening, identifies the structural gaps of the domestic legal framework, and sets out consolidated directions for harmonisation, including from the perspective of preventing modern forms of digital crime against children.

Keywords: AI Act, DSA, GDPR, online protection of minors, digital user safety, harmonisation, Republic of Moldova.

SIGURANȚA UTILIZATORILOR ȘI PROTECȚIA MINORILOR ÎN ERA DIGITALĂ PRIN PRISMA AI ACT ȘI DSA: IMPLICAȚII PENTRU CADRUL NORMATIV AL REPUBLICII MOLDOVA

Abstract

Prezenta lucrare examinează cadrul juridic european dedicat protecției utilizatorilor și a minorilor în era digitală prin prisma a trei instrumente complementare ale dreptului Uniunii Europene: Regulamentul (UE) 2024/1689 privind inteligența artificială (AI Act), Regulamentul (UE) 2022/2065 privind serviciile digitale (DSA) și Regulamentul (UE) 2016/679 privind protecția datelor cu caracter personal (GDPR).

Studiul pornește de la specificul vulnerabilității minorilor în mediul online, susținut de cadrul conceptual al celor cinci categorii de risc 4C+1 (conținut, contact, conduită, consumator și transversale) și analizează garanțiile concrete instituite de cele trei regulamente. Sunt examinate, de asemenea, mecanismele preventive funcționale puse la dispoziție de Curtea de Justiție a Uniunii Europene, de Comitetul European pentru Protecția Datelor și de Comisia Europeană, inclusiv prin Orientările privind protecția minorilor adoptate în temeiul articolului 28 alineatul (1) din DSA și prin prima decizie preliminară a Comisiei împotriva Meta din aprilie 2026.

În partea finală, articolul evaluează stadiul armonizării legislative a Republicii Moldova în acest domeniu, în contextul finalizării screening-ului bilateral, identifică lacunele structurale ale cadrului normativ intern și formulează direcții consolidate de armonizare, inclusiv din perspectiva prevenirii formelor moderne

de criminalitate digitală împotriva copiilor.

Cuvinte-cheie: AI Act, DSA, GDPR, protecția minorilor în online, siguranță utilizatorilor digitali, armonizare, Republica Moldova.

Introduction. One of the most important transformations of today's digital society is the massive presence of children and adolescents in the online environment. They use social networks, messaging apps, digital games, and content-sharing platforms from ever younger ages and for increasingly longer periods of time, often without adult supervision [27]. In this way, minors come to interact daily with a digital environment built largely for adult users, in which the personalisation of offers, the capture of attention, and the use of data have a special impact on a category of users still going through cognitive, emotional, and social development.

The vulnerability of minors in the online environment is not simply a lack of experience. Recent European research, in particular the work developed by Sonia Livingstone and Mariya Stoilova around the 4C framework, shows that the risks children face on the internet can be grouped into four categories: Content, Contact, Conduct, and Contract, to which a series of further risks are added, concerning privacy, health, and fair treatment [21]. This classification shows that the danger does not come only from the illegal or harmful content to which the minor may be exposed, but also from the way digital services are built, from the business models of platforms, and from the algorithmic mechanisms that decide what the user sees. The legal consequence is direct: the protection of minors in the online environment can no longer be thought of as a series of isolated prohibitions, but as a safeguard built into the very structure of the services offered.

Against this background, a dense European legal framework has been built in recent years, around two relatively new instruments with complementary aims. Regulation (EU) 2024/1689 on artificial intelligence (the AI Act) [1] takes a risk-based approach to algorithmic systems and expressly prohibits practices that exploit age-related vulnerabilities, while Regulation (EU) 2022/2065 on digital services (the DSA) [2] sets out graduated due diligence obligations for providers of intermediary services, with specific measures for platforms accessible to minors. The two regulations are completed by the General Data Protection Regulation (GDPR) [3], which provides specific protection for children's personal data, and by the Charter of Fundamental Rights of the European Union [4], in Article 24 raises the best interests of the child to the rank of a primary principle of the Union. At international level, the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law [8], the first international treaty with binding legal character in this field, reinforces the same safeguards.

The need for a stronger legal protection is all the more pressing as the use of artificial intelligence systems and digital platforms may generate, for minors, a wide range of harms. The AI Act expressly recognises that the use of artificial intelligence may harm public interests and fundamental rights, causing material or moral damage, including of a physical, psychological, societal, or economic nature [1]. In the case of children, these effects translate concretely into exposure to harmful content through opaque recommender systems, behavioural manipulation through persuasive design elements, commercial profiling and targeted advertising that exploit age-related weaknesses, as well as risks of online sexual exploitation, harassment, or grooming made possible by the way services are designed. From the perspective of preventing digital crime, this reality highlights an important fact: many of the offences committed against minors in the online environment are preceded, accompanied, or made easier by the technical configuration of the

platforms, which means that the obligations placed on providers acquire, indirectly, a preventive function.

For the Republic of Moldova, the protection of minors in the digital age is not just a matter of public policy choice; it is part of the obligations assumed through the EU accession process. The bilateral screening completed on 22 September 2025 requires a systematic assessment of the compatibility of national legislation with the EU acquis, including in the fields of digital services regulation, data protection, and the safety of products and services. The Moldovan legal framework includes a special law, namely Law No.30/2013 on the protection of children from the negative impact of information [16], and has recently benefited from the harmonisation of the data protection regime through Law No.195/2024 [15], but does not yet have an equivalent of the obligations set out in the AI Act and the DSA.

This article pursues three aims. First, it examines what the three European regulations provide on the protection of minors and what their common points are. Second, it identifies the preventive mechanisms that have proven to be effective and functional in practice. Finally, it puts forward observations on the directions the Republic of Moldova may follow in order to take up the most useful normative and institutional solutions of the European model.

Methods and materials applied. The scientific approach is based on the complementary use of several legal research methods. Through the method of legal analysis, the relevant provisions of the AI Act, the DSA, and the GDPR were examined, with emphasis on the articles that establish specific safeguards for minors. The systemic method allowed a correlated interpretation of these normative instruments, highlighting how these acts complement one another and articulate with the Charter of Fundamental Rights of the EU and with the relevant Council of Europe instruments. This integrated approach is important, because the protection of minors in the digital environment is not achieved through a single normative act, but through the combined application of several regulations, each of which addresses a distinct dimension of risk. The comparative method was used to confront the legal framework of the European Union with the current state of the legislation of the Republic of Moldova, identifying both the elements of harmonisation already in place and the structural gaps that require attention in the context of the accession process. Finally, through synthesis, the conclusions of the research and possible directions for regulation were formulated.

The materials used include the normative acts of the European Union and the legislation of the Republic of Moldova relevant to the topic studied, the applicable instruments of international law, institutional documents with interpretative value, specialised legal doctrine, as well as the relevant case law of the Court of Justice of the European Union.

Discussion and results obtained. **I. Conceptual Framework: The Minor as a Vulnerable Subject in the Digital Space**. The starting point of any legal analysis on the protection of minors in the digital environment is the very definition of the notion of minor. The United Nations Convention on the Rights of the Child defines, in Article 1, the child as any person under the age of 18, unless the applicable law provides for an earlier age of majority [7]. The same age limit is taken up, indirectly, by European Union law instruments: the AI Act refers to "age-related vulnerabilities" without setting a threshold age, while the DSA consistently uses the term "minor", leaving Member States to determine, by reference to domestic law, the boundary between minor and adult. The GDPR introduces, in Article 8(1), a specific rule for the consent of the child in connection with information society services: the processing of a child's data is lawful only if the child has reached

the age of 16, with Member States being able to set a lower age, but not below 13 years [3]. This differentiation between a general limit (18 years) and a specific limit for digital consent (16 or, where applicable, 13 years) marks a particular feature of the protection of minors in the online environment: the child is not seen as a unitary and rigid category, but as a legal subject in development, whose cognitive and judgement capacities are built progressively.

On this normative basis, the idea of the enhanced vulnerability of the child stands out, a notion which, in the digital space, takes on a new dimension compared with how it was understood in classical law. Recital (38) of the GDPR expressly puts forward this dimension, stressing that children deserve increased attention as regards data protection, since they may be less aware of the risks, consequences, and safeguards related to the processing of their data, especially for the purposes of marketing and profiling [3]. Recent doctrine, however, goes further and shows that the vulnerability of the minor in the online environment is not only an individual feature, but is largely the result of the way digital services are built. The specialists Natali Helberger, Marijn Sax, Joanna Strycharz, and Hans-W. Micklitz, argue that the architecture of the digital environment — such as the design of interfaces, attention-capturing mechanisms, the personalisation of options, and so on — generates a significant vulnerability that affects all users but reaches minors with greater intensity [23]. For the law, this perspective has an important consequence, since the protection of minors can no longer rely solely on the child's awareness of the risks to which he or she is exposed, but must address the very digital environment in which the child operates.

The concrete risks to which minors are exposed on the internet can be grouped into four categories, generically called "4C" [21]:

1. *Content*: content risks concern exposure to harmful, violent, or sexual material that promotes self-harm, disinformation, or dangerous behaviours.

2. *Contact*: contact risks refer to situations in which the minor is approached by persons who seek to harm him or her, including through grooming, harassment, or exploitation.

3. *Conduct*: conduct risks cover harmful behaviours in which the minor may be involved as a witness, participant, or victim, in destructive actions such as cyberbullying or the sharing of inappropriate content.

4. *Contract*: contract risks arise in the commercial relationships of the minor in the digital environment, from subscriptions with hidden costs to commercial profiling and targeted advertising.

To these four categories, in the more recent version of the classification, a series of cross-cutting risks is added, concerning the privacy, health, and fair treatment of the child, regardless of the main type of risk. Moreover, the European Commission's Guidelines on the protection of minors adopted under Article 28(1) of the DSA take up and extend this classification, expressly recognising five categories of risks: (1) content; (2) contact; (3) conduct; (4) consumer; and (5) cross-cutting [26].

A significant part of these risks lies on the border between civil and criminal law. Thus, the sexual grooming of a minor through social networks, exposure to child pornography materials, or the use of artificially generated (deepfake) content of a sexual nature may constitute both breaches of the obligations of digital service providers and distinct criminal offences. At European Union level, Directive 2011/93/EU on combating the sexual abuse of children sets out a common set of incriminations, structured around four main categories that Member States are required to transpose, such as: sexual abuse,

including causing a child to witness sexual activities; sexual exploitation through prostitution or pornographic performances, including online; the production, possession, distribution, or knowing access of child pornography materials; and the grooming of children for sexual purposes through digital means (online grooming) [5]. At international level, the Lanzarote Convention and the Budapest Convention enshrine the same type of protection, with emphasis on the digital component of these offences [9; 10]. This reality confirms that the protection of minors in the digital environment cannot be separated from the prevention of modern forms of crime directed against children, and that the obligations placed on online service providers acquire, indirectly, a function of preventing digital criminality.

In European Union law, the protection of minors in the digital environment also rests on a firm constitutional foundation. Article 24 of the Charter of Fundamental Rights of the European Union enshrines the right of children to such protection and care as is necessary for their well-being and provides that, in all actions concerning children, whether taken by public authorities or by private institutions, the best interests of the child must be a primary consideration [4]. This principle, drawn from the United Nations Convention on the Rights of the Child, runs through the entire normative framework analysed in this article and serves as an interpretative benchmark for all provisions applicable to minors: from the consent regime under the GDPR to the systemic risk assessment obligations placed on providers of very large online platforms under the DSA.

In the domestic law of the Republic of Moldova, the same logic is reflected in the Constitution, which, in Article 50, guarantees that the mother and the child have the right to special assistance and protection from the State, completing the framework set out in Article 28 on intimate, family, and private life and Article 32 on freedom of expression [11]. These constitutional benchmarks show that the protection of minors is not a public policy option, but a fundamental legal obligation, which takes priority over and conditions any specific regulation in the field of the digital environment.

II. Safeguards Offered by the AI Act, the DSA, and the GDPR. The three EU acts examined in this article do not have the exclusive aim of protecting minors, but each of them contains specific provisions designed to respond to their particular vulnerabilities in the online environment. The analysis of the three acts makes it possible to identify the concrete safeguards each establishes for users, with emphasis on minors. The way in which these safeguards complement each other will be examined later.

2.1. Safeguards offered by the AI Act. The definition of an artificial intelligence system used by the regulation takes up, with the adaptations needed for the European context, the updated definition put forward by the OECD in 2024 [30], ensuring terminological compatibility with the relevant international standards. Regulation (EU) 2024/1689 classifies AI systems by levels of risk, in which the most severe category (prohibited practices) directly concerns the protection of minors. Article 5(1)(a) prohibits the placing on the market or the use of artificial intelligence systems that use subliminal techniques or intentionally manipulative or deceptive techniques, capable of distorting a person's behaviour and leading them to take a decision they would not otherwise have taken, if this causes or is likely to cause significant harm. Article 5(1)(b) goes further and expressly prohibits those systems which exploit the vulnerabilities of a person or of a group of persons related to age, disability, or a specific social or economic situation, where this produces a substantial distortion of behaviour [1]. This prohibition expressly targets the child as a protected subject, since the minor is by definition a person belonging to an age category with specific vulnerabilities.

The second risk-level category concerns the regime applicable to high-risk systems. Annex III to the regulation lists, among these, artificial intelligence systems used in education and vocational training, such as: systems that assess learning outcomes, that significantly influence access or admission to educational institutions, or that monitor the behaviour of candidates during examinations [1]. Since these systems apply, in particular, in relation to minors, the legislator places on providers a set of specific obligations, such as: risk management throughout the life cycle of the system, the quality and representativeness of the training data, the transparency of technical documentation, effective human oversight, and so on. These obligations have direct effects on the protection of children. European doctrine has stressed that these requirements are essential precisely in order to counter the phenomenon of algorithmic discrimination, often generated by biases embedded in the training data and amplified to the detriment of vulnerable users [25]. To these obligations is added, under Article 27, the mandatory fundamental rights impact assessment, when the system is deployed by public authorities or by operators providing public services.

Another line of protection concerns the transparency obligations laid down in Article 50. AI systems intended for direct interaction with natural persons must be designed in such a way that the user is informed that he or she is interacting with an AI system, and artificially generated or manipulated content, including images, videos, or audio recordings of the deepfake type, must be marked as such [1]. For minors, this obligation has particular relevance, since their ability to distinguish between authentic content and artificially generated content is generally presumed to be lower than that of adults, which exposes them to additional risks of manipulation and deception.

2.2. Safeguards offered by the DSA. Regulation (EU) 2022/2065 contains the most consistent set of obligations expressly dedicated to the protection of minors in the online environment. The central point is Article 28, which requires providers of online platforms accessible to minors to put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security for this category of users [2]. The same provision prohibits, in paragraph (2), the presentation of advertising based on profiling, when the platform is aware with reasonable certainty that the recipient is a minor. This prohibition effectively eliminates one of the most widespread ways of capturing and monetising children's attention in the online environment. However, the above-mentioned obligations do not require providers to process personal data in order to assess whether the user is a minor.

In addition, Article 25 prohibits manipulative design elements (dark patterns). These are design elements of the online interface that deceive or manipulate users or that significantly affect their ability to take free and informed decisions [2]. This prohibition covers, among other things, the order in which options are presented, the visual asymmetry between accept and refuse buttons, and the procedural obstacles placed in the way of exercising a user (consumer) right. This prohibition is to be read together with the general regime of unfair commercial practices established by Directive 2005/29/EC [6], which classifies as unfair those practices that are likely to distort the economic behaviour of vulnerable consumers, a category in which minors are expressly recognised by the European legislator. Article 27 sets out the obligation for providers of online platforms to explain, in their general terms and conditions, the main parameters of their recommender systems and the options through which users can influence those parameters. Article 14(3) requires that, when a platform is mainly intended for minors or is mostly used by them, the general terms must be drafted in a language that minors can understand.

The most demanding category of obligations is reserved for very large online platforms (VLOPs) and very large online search engines (VLOSEs). Articles 34 and 35 require these providers to identify, analyse, and mitigate the systemic risks generated by their services, among which expressly figure the negative effects on the exercise of the fundamental rights of the child and on the protection of minors [2]. Article 35(1)(j) sets out the expected mitigation measures, such as: age verification, parental control tools, mechanisms that help minors signal abuses or access appropriate support. The correct interpretation of these articles is clarified by the relevant official commentary, according to which the obligations imposed by the regulation are graduated in nature, depending on the type and size of the service concerned [22].

2.3. Safeguards offered by the GDPR. Regulation (EU) 2016/679 protects minors first of all through the specific consent regime. Article 8 provides that, where information society services are offered directly to a child, the processing of personal data is lawful only if the child has reached the age of 16, or at least 13 years, if the Member State so provides [3]. For children below this age, processing is lawful only with parental consent, and the controller is obliged to make reasonable efforts to verify this consent.

In addition to the consent rule, the regulation reflects in several places the concern for the specific protection of the child. Recital 38 recognises that minors need specific protection because they may be less aware of the risks, consequences, and safeguards related to the processing of their data, especially for purposes of marketing and profiling. Recital 71 expressly states that automated decision-making should not concern a child, which significantly reduces the scope of application of the regulation's provisions on profiling as regards minors [3]. To these provisions is added the general transparency obligation in Article 12, according to which information addressed to the data subject must be provided in a concise, transparent, intelligible, and easily accessible form. In the case of minors, this requirement translates into the obligation to use a language adapted to their capacity for understanding.

III. Functional Preventive Mechanisms and Application in Practice. The effectiveness of the normative framework analysed in the previous sub-chapter depends, in the final analysis, on how the normative acts complement each other in practice and on the capacity of institutional mechanisms to turn the legal safeguards into concrete effects. In what follows, we will examine, step by step, how the AI Act, the DSA, and the GDPR work together at the functional level, the legal instruments with interpretative value, the recent case law of the Court of Justice of the European Union, and the first measures applying the Digital Services Regulation as regards the protection of minors.

3.1. The combined application of the three regulations at the functional level. A telling example is advertising profiling addressed to minors. Article 28(2) of the DSA expressly prohibits this practice [2], Article 6(1) and Article 8 of the GDPR set out strict conditions on the legal basis and on the valid consent of the child [3], and Article 5(1)(b) of the AI Act prohibits the use of artificial intelligence systems that exploit age-related vulnerabilities [1]. The three acts therefore address the same practice from different angles: the DSA classifies it as a negative obligation of the platform, the GDPR subjects it to the rules on consent, and the AI Act potentially classifies it as a prohibited practice when it involves manipulative algorithmic systems. This convergence produces a rather high level of protection, together forming a solid legal framework for the protection of minors in the digital space.

3.2. Institutional Documents with Interpretative Value (Soft Law). Two recent soft law instruments offer the most concrete benchmarks for the application of the normative

framework. On the one hand, the European Commission's Guidelines on the protection of minors adopted under Article 28(1) of the DSA, published on 14 July 2025 and officially approved in October 2025, organise the obligations of providers around the main categories of risk (4C+1: content, contact, conduct, consumer, and cross-cutting) and set out four basic principles [26]:

1. The proportionality of measures in relation to the identified risk;
2. The rights of the child as an interpretative benchmark;
3. Safety-by-design;
4. Age-appropriate design.

The document provides detailed recommendations on age verification, the limitation of manipulative design elements, and the adjustment of recommender systems in order to avoid the exposure of minors to harmful content. On the other hand, the statement of the European Data Protection Board (EDPB) on age assurance (Statement 1/2025), adopted on 11 February 2025, puts forward ten principles so that these mechanisms respect the standards of the GDPR. Among the most important are the principle of proportionality, the principle of data minimisation, the prohibition of using the data collected for age verification for purposes of further profiling, and the finding that mere self-declaration of age cannot be considered a sufficiently reliable method when high risks for children are at stake [29]. These two documents complete each other, the Commission's Guidelines setting out what must be done for the protection of minors, and the EDPB statement specifying how it must be done in order to respect the right to data protection.

3.3. Recent Case Law of the Court of Justice of the European Union. Two recent judgments of the Court, although they do not directly concern minors, strengthen the safeguards they enjoy in the online environment. In Case C-252/21 *Meta Platforms Inc. and Others v Bundeskartellamt*, delivered by the Grand Chamber on 4 July 2023, the Court held that the processing of Facebook users' data outside the platform (off-Facebook data) is subject to the strict requirements of the GDPR and that a national competition authority may find an infringement of the regulation if this is necessary in order to establish the existence of an abuse of dominant position [20]. At the same time, the Court stated that, when the controller holds a dominant position on the market, the validity of users' consent must be examined with increased rigour, since the imbalance of power may affect freedom of choice. In Case C-446/21 *Maximilian Schrems v Meta Platforms Ireland*, delivered on 4 October 2024, the Court confirmed that the principle of data minimisation, laid down in Article 5(1)(c) of the GDPR, expressly limits the use of personal data for personalised advertising, both as regards the categories of data used and the duration of their retention [19]. Applied in relation to minors, these judgments strengthen the legal foundations of the prohibition of advertising profiling laid down in Article 28(2) of the DSA and reduce the margin of discretion of platforms as regards the consent of minors or of those holding parental responsibility.

3.4. Concrete Application: The Commission's Preliminary Decision against Meta. On 29 April 2026, the European Commission communicated its preliminary findings, according to which Meta had breached the DSA obligations on the protection of minors on the Facebook and Instagram platforms [28]. The Commission identified two main shortcomings. First, the age verification mechanisms used by Meta were not considered adequate to prevent children under 13 from accessing the two platforms, even though Meta's own terms of use expressly prohibit this access. Second, the Commission found that Meta had not taken sufficient measures after receiving notifications indicating the massive presence of minors under 13 on its platforms.

The formal procedure, launched in May 2024, calls into question the very design of the Facebook and Instagram interfaces, which is considered likely to exploit the weaknesses and inexperience of minors and to encourage addictive behaviours, the so-called *rabbit hole* effect — the tendency of platforms to steer the user towards increasingly radical or captivating content. If the shortcomings are confirmed, Meta risks a sanction of up to 6% of its global annual turnover, in accordance with Article 74 of the DSA. This procedure represents the first major case of application of the DSA obligations as regards the protection of minors and shows that the European mechanisms have started to produce concrete effects.

In conclusion, the synergy between the AI Act, the DSA, and the GDPR does not remain at the theoretical level, but takes the form of a concrete set of instruments that work through combined application. Recent institutional documents, the case law of the Court, and the first decisions applying the Digital Services Regulation show that this legal architecture is starting to demonstrate its preventive effectiveness in favour of children, although its application to the entire European digital ecosystem will depend, in the medium term, on the capacity of national authorities to cooperate and on the technical and human resources allocated to supervision. In the medium term, the European debate is already moving towards a possible Digital Fairness Act, an instrument put forward in the doctrine in order to strengthen consumer protection in the digital environment through stricter rules on manipulative design elements, personalised marketing, and harmful practices directed at vulnerable groups, including minors [24].

IV. Conclusions and Implications for the Legal Framework of the Republic of Moldova. The analysis carried out in the previous chapters has shown that the protection of users, and in particular of minors, in the digital environment represents, in EU law, a field regulated through a complex architecture in which the AI Act, the DSA, and the GDPR complement one another and produce, through their combined application, a level of protection that none of the three acts could have offered on its own. The accession process of the Republic of Moldova to the European Union therefore calls for serious reflection on how the principles, mechanisms, and obligations set out by this framework can be taken up in domestic law, taking into account the specific features of the country and the existing institutional capacities.

The Moldovan legal framework already has several instruments of direct relevance for the protection of minors in the digital environment. Law No.30/2013 on the protection of children from the negative impact of information sets out a regime for the classification of information likely to affect the physical, mental, or moral development of children and imposes concrete obligations on providers of information and on media platforms [16]. However, this normative act appears to be already outdated and requires considerable adjustment, or even replacement. The adoption of Law No.195/2024 on the protection of personal data, which enters into force on 23 August 2026, is probably the most important step taken so far in harmonisation with the European acquis in the field covered by this paper, since it substantially transposes the rules of the GDPR, including those on the consent of the child. To these regulations are added: Law No.284/2004 on information society services [18]; Law No.72/2025 on electronic communications [17]; Law No.105/2003 on consumer protection [13]; as well as the provisions of the Criminal Code, in particular Articles 175[1] (Grooming of a minor for sexual purposes) and 208[1] (Circulation of materials regarding the sexual abuse of a child), which criminalise, among other things, perverse acts committed in the digital environment in relation to minors [12]. In addition, the accession of the Republic of Moldova to the Council of Europe Framework Convention on

Artificial Intelligence, signed in Vilnius on 5 September 2024, marks an important international commitment in the direction of alignment with European standards in this field [8].

However, the Moldovan legal framework shows significant gaps when compared with the European model analysed. The first and most visible gap is the absence of specific national legislation transposing the systemic obligations established by the AI Act and the DSA. There is no internal equivalent of the prohibition of manipulative practices that exploit age-related vulnerabilities, of the obligation on providers of online platforms to ensure a high level of privacy, safety, and security for minors, of the prohibition of advertising profiling addressed to children, or of the systemic risk assessment obligations. Another gap is institutional in nature: the national authorities that would supervise the application of such rules, such as the National Centre for Personal Data Protection, the General Police Inspectorate, the State Inspectorate for the Supervision of Non-Food Products and Consumer Protection, do not currently have explicit competences or dedicated technical resources to investigate the functioning of algorithmic systems, to assess the design of platforms, or to cooperate across borders in complex investigations. The general procedural framework for the activity of these authorities is regulated by the Administrative Code [14], but it does not contain special procedures adapted to the specific features of investigating algorithms or of cooperating with digital services coordinators from other States. Another constraint concerns the preventive-criminal component: the Criminal Code criminalises classical offences against minors, but is not yet fully adapted to the emerging forms of digital criminality, in particular online grooming through algorithmic platforms, the generation of deepfake content of a sexual nature depicting children, and exploitation through automated behavioural profiling.

Building on the European model and on the gaps identified, four consolidated lines of action emerge for the Republic of Moldova. First, the transposition of the DSA obligations on the protection of minors, in the sense of introducing specific obligations for providers of online platforms accessible to minors: the prohibition of advertising profiling addressed to children, the obligation to draft terms of use in a language understood by minors, the obligation to put in place accessible mechanisms for reporting abuses and harmful content. Second, the development of a domestic legal framework on artificial intelligence systems, inspired by the principles of the AI Act, which should expressly prohibit manipulative practices that exploit age-related vulnerabilities and set out a regime of specific obligations for high-risk systems used in fields concerning minors, such as education. Third, the strengthening of the supervisory and investigative capacities of the national authorities, through specialised staff training, the development of technical skills for algorithmic auditing, and the setting up of mechanisms for inter-institutional cooperation between the data protection authority, the consumer protection authority, and the criminal prosecution bodies. Fourth, the adaptation of the Criminal Code to the modern forms of digital criminality against minors, taking into account recent technological developments, in particular the generation of synthetic content and exploitation through automated systems.

The protection of minors in the digital age cannot be ensured exclusively through a single normative act or by a single institution. The European model analysed shows that the effectiveness of such a regime depends on the combined application of several legal instruments, on the simultaneous involvement of several authorities, and on their capacity to cooperate. For the Republic of Moldova, harmonisation with the EU acquis in this field should not be seen merely as an obligation assumed in the accession process, but as an opportunity to build, already from the current stage, a digital environment that is safer

for children, more transparent for users, and more accountable for service providers. The transposition of European norms, however well it may be carried out, will not produce concrete effects in the absence of a legal culture that recognises the rights of the child in the digital environment as fundamental rights, and of a sustained effort of digital literacy for children, parents, and teachers. This is, in the final analysis, the ground on which regulation proves its practical usefulness, not only through the sanctions it lays down, but also through the gradual change in the way in which the entire society understands and manages the risks to which children are exposed in the digital world.

Bibliographical references

1. European Parliament and Council, Regulation (EU) 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act / AI Act), OJ L, 2024/1689, 12.7.2024.
2. European Parliament and Council, Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services (Digital Services Act / DSA), OJ L 277, 27.10.2022.
3. European Parliament and Council, Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation / GDPR), OJ L 119, 04.05.2016.
4. European Parliament, Council and Commission, Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012.
5. European Parliament and Council, Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011.
6. European Parliament and Council, Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11.06.2005.
7. United Nations, Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989, entered into force on 2 September 1990.
8. Council of Europe, Framework Convention of 5 September 2024 on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CETS No.225, opened for signature in Vilnius.
9. Council of Europe, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), CETS No. 201, opened for signature in Lanzarote on 25 October 2007, ratified by the Republic of Moldova by Law no. 263 of 19 December 2011.
10. Council of Europe, Convention on Cybercrime (Budapest Convention), CETS No.185, opened for signature on 23 November 2001, ratified by the Republic of Moldova by Law No.6 of 2 February 2009.
11. Constitution of the Republic of Moldova, adopted on 29 July 1994, as subsequently amended.
12. Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002, as subsequently amended.
13. Law No.105/2003 on consumer protection, as subsequently amended.
14. Administrative Code of the Republic of Moldova No.116/2018, as subsequently amended.
15. Law No.195/2024 on the protection of personal data, published on 23 August 2024, entering into force on 23 August 2026.

16. Law No.30/2013 on the protection of children from the negative impact of information, as subsequently amended.
17. Law on electronic communications No.72/2025, as subsequently amended.
18. Law No.284/2004 on electronic commerce, as subsequently amended.
19. CJEU, Case C-446/21, Maximilian Schrems v Meta Platforms Ireland Ltd, Judgment of the Fourth Chamber of 4 October 2024.
20. CJEU, Case C-252/21, Meta Platforms Inc. and Others v Bundeskartellamt, Judgment of the Grand Chamber of 4 July 2023.
21. Livingstone Sonia, Stoilova Mariya. The 4Cs: Classifying Online Risk to Children. CO:RE Short Report Series on Key Topics. Hamburg, Leibniz-Institut für Medienforschung | Hans-Bredow-Institut, 2021, DOI: 10.21241/ssoar.71817.
22. Wilman Folkert, Kalėda Saulius Lukas, Loewenthal Paul-John. The EU Digital Services Act: A Commentary. In: Oxford University Press, 2024.
23. Helberger Natali, Sax Marijn, Strycharz Joanna, Micklitz Hans-W. Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability. In: Journal of Consumer Policy, Vol.45, No.2, 2022, pp.175-200.
24. Busch Christoph, Fletcher Amelia. Shaping the Future of European Consumer Protection: Towards a Digital Fairness Act? In: CERRE Issue Paper, Brussels, December 2024.
25. Hacker Philipp. Teaching Fairness to Artificial Intelligence: Existing and Novel Strategies against Algorithmic Discrimination under EU Law. In: Common Market Law Review, Vol.55, No.4, 2018, pp.1143-1185.
26. European Commission. Guidelines on the protection of minors under the Digital Services Act, C(2025) 4658 final, Brussels, 14 July 2025, issued under Article 28(4) of Regulation (EU) 2022/2065.
27. European Commission. Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), COM(2022) 212 final, Brussels, 11 May 2022.
28. European Commission. Press Release IP/26/920, Commission preliminarily finds Meta in breach of Digital Services Act for failing to prevent minors under 13 from using Instagram and Facebook, Brussels, 29 April 2026.
29. European Data Protection Board (EDPB), Statement 1/2025 on Age Assurance, adopted on 11 February 2025.
30. OECD, Explanatory Memorandum on the Updated OECD Definition of an AI System, OECD Artificial Intelligence Papers, No.8, Paris, March 2024.

CZU 343.1:341.217(4)EU DOI: https://doi.org/10.5281/zenodo.20824724

PROCEDURES FOR ADJUSTMENT THE NATIONAL LEGISLATION ON THE PUNISHMENT APPLIED TO THE LEGAL ENTITY IN CORRELATION WITH EUROPEAN UNION LEGISLATION

Marian GHERMAN,
PhD, University Professor,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-2033-1566

Sergiu VEREBCEANU
PhD Candidate,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Lawyer, Mediator,
Republic of Moldova
ORCID ID: 0009-0004-7277-5988

Abstract

The economic base determines the social, political, cultural, and institutional superstructure. Therefore, the economic situation of a state tends to determine certain human behaviors, including criminal behavior at the level of companies. It is found both in areas of maximum prosperity and poverty [1].

Over the last two decades, the evolution of corporate criminality has moved from a niche technique to a global strategic priority, situated at the intersection of technology, economy, geopolitics, and civil society. Threats evolve faster than defense mechanisms. For the purpose of implementing the conditionalities of the National Regulatory Plan for 2025, in the context of aligning the legislation of the Republic of Moldova with that of the European Union, the main objective of the state is the consolidation and alignment of national legislation with relevant international standards. This represents an essential necessity for the integration of the Republic of Moldova into the European Union and for ensuring fair and efficient justice.

Keywords: legal entity, criminal liability of the legal entity, EU directives, national legislation.

PROCEDURI DE ARMONIZARE A LEGISLAȚIEI NAȚIONALE A PEDEPSEI APLICATE PERSOANEI JURIDICE ÎN CORAPORT CU LEGISLAȚIA UNIUNII EUROPENE

Abstract

Baza economică determină suprastructura socială, politică, culturală și instituțională. Prin urmare situația economică a unui stat tinde să determine anumite comportamente umane, inclusiv comportamentul infracțional la nivelul companiilor. Ea se regăsește atât în zone de prosperitate maximă, cât și de sărăcie [1].

În ultimele două decenii, evoluția criminalității corporatiste a evoluat de la tehnică de nișă la o prioritate strategică globală, aflată la intersecția dintre tehnologie, economie, geopolitică și societate civilă. Amenințările evoluează mai repede decât mecanismele de apărare. În scopul implementării condiționalităților din Planul național de reglementări pentru anul 2025, în contextul alinierii legislației Republicii Moldova la cele ale Uniunii Europene, principalul obiectiv al statului este consolidarea și alinierea legislației naționale la standardele internaționale relevante. Aceasta reprezintă o necesitate esențială pentru integrarea Republicii Moldova în Uniunea Europeană și pentru asigurarea unei justiții echitabile și eficiente.

Cuvinte-cheie: persoană juridică, răspunderea penală a persoanei juridice, directive UE, legislație națională.

Introduction. "The defining characteristic of the postmodern political era is the absolute domination of money as a principle of organizing human and international relations. Sometimes it seems that nothing else exists", said Jim Hoagland, quoted by David C. Korten in the book "The Post-Corporate World". Corporations support the political world, impose the laws that are adopted, and have individuals who lead intelligence, inquiry, and investigation services, as well as magistrates in key positions. It is clear that no one dares to initiate investigations and criminal inquiries. Victor Hugo stated that: "behind every great fortune lies a crime". The enormous fortunes held by only a few hundred or thousand corporations were obtained and amplified through financial speculation, direct or blatant theft, corruption, falsification of accounting records, fraudulent use of confidential information, and manipulation of capital markets. All these values were achieved by criminal structures operating within large and medium-sized corporations. Corporate criminality represents a special category in the extremely diverse landscape of criminality as a social phenomenon. It represents the most sophisticated form of illegal action conceived by the top structures of large corporations (super-elites) and implemented through refined strategies involving governmental and law-enforcement institutions. The fusion between corporate criminality and the political world has generated numerous financial benefits for the decision-makers of large corporations that control money, markets, technologies, and information [1, p.13-14].

The discussion of the criminal liability of the legal entity raises many essential aspects of criminal liability, some involving the reassessment or even reform of fundamental principles of criminal law. Among these, the most affected would be the principle of individual and personal criminal liability, the grounding of criminal liability on the principle of guilt, and the principle of equality before criminal law, principles from which major deviations would have to be accepted [2, p.29].

In legal doctrine, it has been shown that to establish the criminal liability of a legal entity means, in reality, engaging the criminal liability of all the individuals who compose it, sanctioning without distinction the guilty and the innocent, those who approved and those who disapproved of the criminal act, those who did not vote and those who decided upon its commission. The idea of such liability would lead to the admission of criminal liability for another, which is not accepted [3, p.59].

The necessity of sanctioning the legal entity derives from the usefulness of attracting it to criminal liability. For a long period of time, it was considered that the legal entity had a fictitious character, being only an instrument intended to satisfy the interests of its members, so that its criminal liability could not be discussed. Supporters of this conception stated that the legal entity cannot commit an offense on its own, directly, but only through a natural person, being incapable of its own action; that due to the specialty of its legal capacity it cannot commit offenses, this being contrary to the principle of specialty and exceeding the limits of the activity of the legal entity; that the lack of a subjective element in the case of the legal entity determines the impossibility of bringing it to criminal liability, guilt being an essential feature of the offense; that the personal character of criminal liability would also oppose the establishment of such liability upon the legal entity, which would in reality answer for the act of another; and that the technical difficulty of applying a punishment to the legal entity also militates against the introduction of such an institution into criminal legislation [4, p.656-657].

In the Criminal Code of the Republic of Moldova of 2002, for the first time among the legal provisions, the possibility of bringing the legal entity to criminal liability was included, unlike at least the legal provisions of the criminal law of the MSSR from 1961 [5].

The promoters of the idea regarding the criminal irresponsibility of legal entities traditionally invoked the impossibility of applying punishment to a legal entity. However, it can certainly be observed that some sanctions of a purely physical nature, which aim to produce suffering or eliminate the offender, by their nature, are not capable of being applied to legal entities. Such punishments are imprisonment or the death penalty. As regards the criminal liability of legal entities, and particularly the range of punishments, the basis of this argument has been seriously shaken by the experience of certain foreign legislations (France, the Netherlands, the USA, England, Belgium, etc.), which contain a whole arsenal of punishments and security measures applicable, not without effectiveness, to legal entities. According to the current regulations of the Criminal Code of the Republic of Moldova, the following punishments may be applied to legal entities: fine; deprivation of the right to carry out a certain activity; liquidation [6, p.67].

Methods and materials applied. The most important document adopted in this field by the Council of Europe is Recommendation R(88)18 concerning the liability of enterprises as legal persons for offences committed in the course of their activities. The purpose of the Recommendation is to encourage the adoption of legislative measures so that, on the one hand, enterprises may be declared liable for offences committed in the course of their activities, without however exempting the natural persons who committed the act from liability, and, on the other hand, to create a system of sanctions and measures adapted to enterprises, for the purpose of ensuring effective punishment of unlawful activity, preventing the commission of new offences, and repairing the damage caused by the offence [3, p.439].

The Recommendation — concerning public or private enterprises endowed with legal personality and carrying out economic activities — formulates several principles which should govern the regime of criminal liability of legal persons: a legal person may be liable for offences committed in the exercise of its activity, even if such offences are unrelated to the object of the enterprise and regardless of whether the natural person who committed them has been identified or not; the enterprise must be exempted from liability when its management was not involved in the commission of the offence and took all necessary measures to prevent its commission; engaging the liability of the enterprise must not lead to exempting from liability the natural persons involved in committing the offence. In particular, persons exercising management functions must be liable for omission in fulfilling their obligations, an omission which led to the commission of the offence; criminal sanctions should be applied only when required by the nature of the offence, the gravity of the enterprise's fault, the consequences for society, and the need to prevent other offences. For less serious acts, recourse to other forms of liability is indicated, such as, for example, administrative liability [3, p.440].

The Recommendation provides for a wide range of applicable sanctions, as principal or accessory, with or without suspension, to legal persons, including: closure of the enterprise; dissolution of the enterprise; publication of the decision by which a sanction or measure was imposed.

The criminal liability of legal persons is also addressed by Resolution No.1 concerning the civil, administrative and criminal aspects of the fight against corruption, adopted during the Conference of European Ministers of Justice (Malta, 1994).

Recommendation R(96)8 was adopted in 1996 and concerns criminal policy in a changing Europe, considering it appropriate for member states to adopt provisions establishing the criminal liability of legal persons or other measures having the same purpose. Likewise, Resolution (97)24 concerning the 20 guiding principles in the fight against

corruption emphasizes the need to establish measures preventing the transformation of legal persons into shields for concealing offences.

Although the European Convention on Human Rights makes no reference to a possible criminal liability of legal persons, it is not incompatible with such liability. Consequently, when there is a criminal charge against a legal person, it benefits from the guarantees of a fair trial conferred by Article 6 of the Convention. This case-law is in line with doctrinal orientation, which considers that the provisions of Articles 6 and 7 of the Convention protect legal persons to the same extent as natural persons.

Under the auspices of the Council of Europe, the Criminal Law Convention on Corruption was also concluded in Strasbourg on 27.01.1999. The regulations of the Convention oblige member states to include in their national legislation sanctions applicable to legal persons committing the offences covered by the Convention. Among these, signatory states are obliged to adopt the necessary measures to allow the engagement of criminal liability of legal persons for offences of bribery, trading in influence, and money laundering committed on their behalf by a natural person. The condition of criminal liability must arise when the natural person acted in a management, control, or representation function, or participated as an instigator or accomplice in the commission of the offences covered by the Convention.

According to Article 26 of the United Nations Convention against Corruption (New York, 31 October 2003 – RM, 6 July 2007), the state adopts the necessary measures, in accordance with its legal principles, to establish the liability of legal persons participating in the offences established by the Convention [7, p.1284].

Regulations concerning the liability of legal persons are also found in Article 12 of the Convention on Cybercrime, adopted in Budapest on 23.11.2001, as well as in Article 10 of the Council of Europe Convention on the Prevention of Terrorism and respectively Article 22 of the Council of Europe Convention on Action against Trafficking in Human Beings, both adopted in Warsaw on 16 May 2005. These conventions impose on States Parties the obligation to ensure the imposition of effective, proportionate, and dissuasive sanctions, whether criminal or otherwise, on legal persons responsible for the offences provided by the convention [3].

Discussions and results obtained. On 26 July 1995, the Convention on the protection of the financial interests of the European Communities was adopted. The Second Protocol to the Convention, signed on 19.06.1997, concerns the repression of money laundering and the liability of legal persons. According to it, states are obliged to adopt the necessary measures to ensure the possibility of holding legal persons liable. Article 4-1 provides that: "each Member State shall take the necessary measures to ensure the application, in the case of a legal person declared liable under Article 3-1, of effective, proportionate and dissuasive sanctions, including criminal or non-criminal fines and possibly other sanctions" [3, p.450].

Regarding the conditions for engaging the criminal liability of the legal person, the drafters opted for the indirect model, which presupposes that the liability of the legal person derives from the conduct of the natural person who, according to the regulation, has the capacity to bind it criminally. It is considered that the possibility of establishing the direct model in the case of negligent offences may still be discussed, which would imply that the guilt of the legal person be founded directly on the attitude or policy promoted by it. At the same time, it would be possible for this differentiated treatment to be developed through case-law, under the control of the Court of Justice of the European Communities.

The sanctions applicable to legal persons provided by the Convention are principal penalties (the fine) and complementary penalties (publication of the conviction decision; exclusion from the benefit of subsidies for a certain period; confiscation of goods produced or obtained through the commission of offences). We note that the drafters did not regulate as a penalty the dissolution of the legal person or the suspension of its activity, sanctions known in numerous legal systems.

During the process of ratification of the Convention, difficulties arose in introducing criminal liability of legal persons into the domestic law of all Member States of the European Union. This was because liability of the legal person was also to be applied by states which had initially rejected this idea. According to the synthesis reports related to the Convention project, only Italy and Greece considered that implementation of these provisions would raise constitutional problems. Austria and Germany also invoked gaps related to the compatibility of the project with their legal tradition, the legal systems of these countries not recognizing at that stage the actual criminal liability of the legal person. The entry into force of the project represented the etymology of the evolution of Community legislation and case-law, being an important step in the direction of generalizing criminal liability for legal persons in Continental European law [7, p.456].

The United Nations Convention against Transnational Organized Crime (New York, 15 November 2000 – RM, 17 February 2005) calls on states to adopt the necessary measures, in accordance with their legal principles, for establishing the liability of legal persons participating in serious offences involving an organized criminal group and committing the offences provided by the Convention. According to the same article, states must ensure in particular that legal persons held liable are subject to effective, proportionate and dissuasive sanctions of a criminal or non-criminal nature, including monetary sanctions [7, p.1284].

Nowadays, modern digital society is exposed from ordinary citizens and companies to governments, armies, and critical institutions. Failure to adapt leads to systemic failure — organizations that do not innovate will quickly become vulnerable to attacks they can no longer understand, prevent, or control. We live in an era in which Artificial Intelligence is no longer a science-fiction concept, but a real catalyst of digital transformation in all fields — from healthcare and transport to education, commerce, and security.

Organizations now generate tens of millions of security events and logs daily, while attacks become increasingly sophisticated, rapid, and polymorphic; the human capacity to manually detect and respond to all these signals is, quite simply, exceeded.

Policies and regulations adapted to the new digital reality. International examples: European Union — proposals within the AI Act for regulating generative technologies. United States — laws against deepfakes in electoral campaigns. Criminal liability for the abusive use of AI. There is increasing discussion about introducing a legal framework that would establish the responsibility of actors involved in the development, distribution, and use of AI to be used or prohibited in: electoral campaigns, governmental communications, financial markets and stock declarations, and public health fields [8, p.159-160].

Currently, the national legislation is in the process of implementing the conditionalities of the National Regulatory Plan for 2025, in the context of aligning the legislation of the Republic of Moldova with those of the European Union. For the execution of the roadmap "Rule of Law", Chapter 23 "Justice and Fundamental Rights", adopted by GD No.275/2025: – Pillar: II. Combating corruption, Action 1.1 "Amending the Criminal Code for alignment with the EU acquis on combating corruption in the private sector in order to regulate the liability of legal entities for acts of corruption and related actions", and Ac-

tion 1.7 "Amending the regulatory framework for the purpose of regulating sanctions for violating international restrictive measures, in accordance with EU standards". The main objective of this project is to consolidate and develop current regulations to ensure more efficient prevention and combating of criminal acts, and the alignment of national legislation with relevant international standards is an essential necessity for the integration of the Republic of Moldova into the European Union and for ensuring fair and efficient justice [9].

The European normative acts which jointly regulate new categories of penalties applicable to legal persons that need to be transposed into national legislation are: a) exclusion from the right to benefit from state benefits or aid – (Directive 2024/1226; Directive 2018/1673; Framework Decision 2003/568/JHA; Framework Decision 2008/913/JHA); b) exclusion from access to public funds, including public procurement procedures, grants and concessions – (Directive 2024/1226; Directive 2018/1673); c) disqualification from the right to carry out commercial activities – (Directive 2024/1226; Directive 2018/1673; Framework Decision 2003/568/JHA; Framework Decision 2008/913/JHA); d) placing under judicial supervision – (Directive 2024/1226; Directive 2018/1673; Framework Decision 2003/568/JHA; Framework Decision 2008/913/JHA); e) legal liquidation – (Directive 2024/1226; Directive 2018/1673; Framework Decision 2003/568/JHA; Framework Decision 2008/913/JHA); f) closure of the establishments that served for the commission of the offence – (Directive 2024/1226; Directive 2018/1673; Framework Decision 2008/913/JHA); g) publication in the public interest of the full text of the judgment – (Directive 2024/1226) [10].

Conclusions and recommendations. As part of the European integration process, the Republic of Moldova has undertaken a series of objectives related to the transposition into the legislation of the Republic of Moldova of certain directives and decisions. Thus, in order to achieve a high level of security and justice within the European Union, as well as to ensure the integrity of the European internal market, it is necessary to establish rules for aligning the sanctions and offences committed by legal persons. Following these considerations, the purpose of the amendments proposed by legal practitioners and the legislator is to harmonize the Criminal Code of the Republic of Moldova through:

1. Adjustment of the institution of the legal person as a subject of the offence. This will exclude from the circle of legal persons liable to criminal punishment the following subjects: states, public bodies exercising state authority and public international organizations, where appropriate by amending Article 23 of the Criminal Code of the Republic of Moldova.

2. Transfer of criminal liability in the case of the reorganized legal person. This mechanism presupposes preventing the possibility of legal persons evading criminal prosecution or trial of the case through their reorganization. The transition of criminal liability must be made proportionally, depending on the value of the assets which the reorganized legal person absorbs from the dissolved legal person guilty of committing the act, where appropriate by supplementing Article 21 of the Criminal Code of the Republic of Moldova.

3. Establishment of criminal records and recidivism status of the legal person, as well as their transfer in the case of reorganized legal persons. The current wording of Articles 34, 110 and 111 of the Criminal Code of the Republic of Moldova does not clearly provide that a legal person may commit an offence in a state of recidivism or that it may have a criminal record. Thus, it is necessary to clearly establish that a legal person may commit an offence in a state of recidivism and that, in respect of such entities, criminal records may exist.

4. Adjustment of the system of penalties applicable to legal persons and the introduction of new sanctions such as: a) exclusion from the right to benefit from state benefits or aid; b) exclusion from access to public funds, including public procurement procedures, grants; c) disqualification from the right to carry out commercial activities; d) placing under judicial supervision; e) legal liquidation; f) closure of the establishments that served for the commission of the offence; g) publication in the public interest of the full text of the judgment. Transposition of EU legislation on combating money laundering through criminal law measures and combating corruption in the private sector. These proposals revise the system of sanctions applicable to legal persons, with the aim of creating a fairer, more efficient and more dissuasive legal framework. In the current wording of the Criminal Code of the Republic of Moldova, the penalty of liquidation of the legal person and deprivation of the right to carry out a certain activity may be applied, including as principal penalties, without being accompanied by a pecuniary penalty. This approach allows a legal person to avoid the direct financial consequences of its act, even when it is sanctioned with the penalty in the form of liquidation or deprivation of the right to exercise a certain activity, as principal penalties. Thus, it has been established that the only principal penalty shall be the fine, while the other sanctions shall be complementary penalties. The already existing complementary penalties (deprivation of the right to carry out a certain activity and liquidation of the legal person), as well as the newly introduced ones, in order to have sufficient dissuasiveness must accompany the penalty in the form of a fine. This amendment will eliminate situations in which a legal person, by committing an offence, causes damage to the state or other persons, but is independently subjected only to a penalty in the form of liquidation or in the form of deprivation of the right to carry out a certain activity.

5. Transposition of Directive 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures. Among these being primarily criminal liability, as well as administrative liability, as an option for Member States in relation to the value of the "funds or economic resources". In particular, criminal liability is to be applied in the following cases: making funds or economic resources, directly or indirectly, available to a designated person, entity or body or for their benefit, in breach of a prohibition constituting a Union restrictive measure; failure to comply with the obligation to freeze funds or economic resources belonging to, owned, held or controlled by a designated person, entity or body, in breach of an obligation constituting a Union restrictive measure; carrying out transactions or continuing transactions with a third country, with bodies of a third country or with entities or bodies owned or controlled directly or indirectly by a third country or by bodies of a third country, including the award or continued performance of public procurement contracts or concession contracts, where the prohibition or restriction of such conduct constitutes a Union restrictive measure; defining international restrictive measures and the total turnover (from 1% to 5%) applied to legal persons [11].

Bibliographical references

1. Voicu Costică, Marcoci Petrică-Mihail, Voicu Adriana Camelia. Criminalitatea corporatistă între criza economico-financiară și frauda transnațională. Târgoviște, Ed. Bibliotheca, 2012.
2. Poenaru Iulian. Problemele legislației penale. București, Ed.Lumina Lex, 1999.
3. Streteanu F., Chiriță R. Răspunderea penală a persoanei juridice. Ediția 2, București, Ed. C.H. Beck, 2007.

4. Neagu Norel. Drept penal. Partea generală. București, Ed. Universul Juridic, 2019.
5. Criminal Code of the Republic of Moldova, No.985 of 04.18.2002. In: Monitorul Oficial of the Republic of Moldova, of 04.14.2009, No.72-74, (195).
6. Gladchi Gh., Mariț A., Berliba V., Dolea I., Zaharia V. Noua legislație penală și procesual penală. Realizări și controverse. Impactul asupra detenției, Institutul de Reforme Penale, Chișinău, 2007.
7. Dolea Igor. Codul de Procedură Penală al Republicii Moldova. Comantariu Aplicativ. Ediția a 2-a, Chișinău, Ed. Cartea Juridică, 2020.
8. Chițan Sergiu. Securitatea Cibernetică a Infrastructurilor Critice și Protecția Datelor: Amenințări, Soluții și Reglementări. Chișinău, 2025.
9. Government Decision No.275 of 14 May 2025 on the Approval of the Roadmap on the Rule of Law (Benchmark Criterion in the Republic of Moldova's European Union Accession Process). In: Official Gazette of the Republic of Moldova, No.241–244, Art. 284, 20 May 2025.
10. Justice.gov.md Available: https://www.justice.gov.md/sites/default/files/document/attachments/cs_final_pl_cp_directive_spalarea_banilor_mri_si_coruptie_sectori_privat.pdf (accessed on 22.04.2026).
11. Justice.gov.md Available: https://www.justice.gov.md/sites/default/files/document/attachments/nf_pl_cp_directive_spalarea_banilor_mri_si_coruptie_sectori_privat.pdf (accessed 22.04.2026).

CZU 343.359.2 **DOI: https://doi.org/10.5281/zenodo.20824888**

CRIMINAL LIABILITY FOR TAX EVASION OF ECONOMIC ENTITIES IN THE REPUBLIC OF MOLDOVA: THEORETICAL DISTINCTIONS, PRACTICAL ASPECTS AND CONTEMPORARY CHALLENGES

Roman RUSSU,
PhD Student,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Senior State Inspector, National Center for Personal Data Protection,
Republic of Moldova
ORCID: 0009-0001-6437-4736

Abstract

This study analyzes the criminal liability for tax evasion by economic entities in the Republic of Moldova, focusing on the theoretical distinctions between criminal and contraventional liability, practical aspects, and contemporary challenges. Examining the provisions of Article 244 of the Criminal Code of the Republic of Moldova and Article 301 of the Contraventional Code, the study highlights the criteria for incrimination, value thresholds, and qualification difficulties in the context of increasingly complex evasion schemes, including the use of tax havens and shell companies. The analysis reveals that the lack of clear definitions, uneven application of the law, and insufficient international cooperation affect the effectiveness of combating the tax evasion phenomenon.

The study includes an analysis of the case law of the Supreme Court of Justice and the judgments of the European Court of Human Rights in the cases of Epidavr S.R.L. v. the Republic of Moldova, Tasoncom S.R.L. v. the Republic of Moldova and Avicola Vulcănești S.A. v. the Republic of Moldova. Solutions are proposed for improving the regulatory framework and judicial practice, including harmonization with European directives 2011/16/EU and (EU) 2018/843. The study analyzes recent legislative amendments, including Law No.136/2024 on tightening criminal sanctions for tax evasion, as well as the international commitments undertaken by the Republic of Moldova through accession to the Inclusive Framework on BEPS and implementation of OECD standards on automatic exchange of information.

Keywords: criminal liability, tax evasion, economic entities, contraventional liability, judicial practice, Art. 244 CC RM, ECHR case law, European harmonization.

RĂSPUNDEREA PENALĂ PENTRU EVAZIUNEA FISCALĂ A ENTITĂȚILOR ECONOMICE ÎN REPUBLICA MOLDOVA: DELIMITĂRI TEORETICE, ASPECTE PRACTICE ȘI PROVOCĂRI CONTEMPORANE

Abstract

Prezentul studiu analizează răspunderea penală pentru evaziunea fiscală a entităților economice în Republica Moldova, cu accent pe delimitările teoretice dintre răspunderea penală și cea contravențională, aspectele practice și provocările contemporane. Examinând prevederile Art. 244 din Codul penal al Republicii Moldova și Art. 301 din Codul contravențional, studiul evidențiază criteriile de incriminare, pragurile valorice și dificultățile de calificare în contextul complexității tot mai mari a schemelor de evaziune, inclusiv utilizarea paradisurilor fiscale și a firmelor fantomă. Analiza relevă că lipsa unor definiții clare, aplicarea neuniformă a legii și insuficiența cooperării internaționale afectează eficiența combaterii fenomenului evazionist.

Studiul include o analiză a jurisprudenței Curții Supreme de Justiție și a hotărârilor Curții Europene a Drepturilor Omului în cauzele Epidavr S.R.L. c. Republicii Moldova, Tasoncom S.R.L. c. Republicii Moldova și Avicola Vulcănești S.A. c. Republicii Moldova. Se propun soluții pentru îmbunătățirea cadrului normativ și a practicii judiciare, inclusiv prin armonizarea cu directivele europene 2011/16/UE și (UE) 2018/843. Sunt

analizate modificările legislative recente, inclusiv Legea nr. 136/2024 privind înăsprirea sancțiunilor penale pentru evaziune fiscală, precum și angajamentele internaționale asumate de Republica Moldova prin aderarea la Cadrul Incluziv BEPS și implementarea standardelor OCDE privind schimbul automat de informații.

Cuvinte-cheie: răspundere penală, evaziune fiscală, entități economice, răspundere contravențională, practică judiciară, art. 244 CP RM, jurisprudență CEDO, armonizare europeană..

Introduction. Legal liability, as a measure of state coercion, represents a fundamental instrument in ensuring compliance with tax obligations. The Constitution of the Republic of Moldova, in Article 58, explicitly provides that «citizens have the obligation to contribute through taxes and duties to public expenditure" [1, Art. 58]. To guarantee this constitutional obligation, the legislator has established two distinct forms of liability for the avoidance of tax obligations: contraventional liability and criminal liability.

Tax evasion is the logical result of the flaws and inconsistencies of an imperfect and poorly assimilated legislation, of defective methods and modalities of application, as well as the lack of foresight and incompetence of the legislator whose fiscality is just as guilty as those whom it thereby provokes to evasion [2, p. 414].

At the same time, tax evasion represents a totality of lawful or unlawful procedures through which taxpayers evade, in whole or in part, the taxable matter of tax obligations. According to author S. Gorobievschi, tax evasion can be defined as "the totality of unlawful actions committed intentionally by taxpayers aimed at reducing tax obligations or evading their payment" [3, p. 62]. The evasion phenomenon in the Republic of Moldova continues to be one of significant proportions, which outlines the need for a multidisciplinary study to answer the question "why do more and more people avoid honoring their tax obligations and seek methods of avoidance". In essence, an adequate formula for tax evasion consists of the taxpayer's evasion, by any means, in whole or in part, from the payment of taxes, duties, and/or any other sums due to the public budget [3, p. 63].

It should be noted that, although the Tax Code of the Republic of Moldova (hereinafter TC RM) does not expressly define the notion of "tax evasion", but regulates the procedure for examining tax violations, the Criminal Code of the Republic of Moldova (hereinafter CC RM) criminalizes this act in Art. 244. Through Law No.206 of November 18, 2011, amendments were made both to the Criminal Code and to the Contraventional Code (hereinafter Contraventional Code) by introducing liability for tax evasion by natural persons (not practicing entrepreneurial activity) both as a crime (Art. 244[1] CC RM) and as an administrative contravention (Art. 301 Contraventional Code). Previously, only tax evasion by enterprises, institutions, and organizations was criminally sanctioned in accordance with Art. 244 of the CC RM [6].

The purpose of the study is to research aspects related to legal liability for tax evasion in the Republic of Moldova, a liability materialized in the form of criminal liability. The specific objectives aim to: critically analyze the normative framework regulating criminal liability for tax evasion of economic entities; theoretically delineate between criminal and contraventional liability; identify application problems of Art. 244 CC RM in judicial practice; highlight contemporary challenges generated by the complexity of evasion schemes and the European integration of the Republic of Moldova.

In conducting this study, classical scientific research methods specific to legal sciences were used. The logical method allowed for the coherent analysis of relevant legal concepts and institutions, as well as the identification of relationships between them. The comparative method was used to highlight similarities and differences between the legislation of the Republic of Moldova and European standards in the matter, particularly

Directive 2011/16/EU on administrative cooperation in the field of taxation [4] and Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [5]. The historical method allowed the analysis of the evolution of regulations in the field, including legislative amendments made through Law No.206 of November 18, 2011 [6], which introduced liability for tax evasion by natural persons both as a crime (Art. 244¹ CC RM) and as an administrative contravention (Art. 301 Contraventional Code), as well as the subsequent evolution of these norms.

The empirical material of the research consists of national normative acts (Constitution of the Republic of Moldova, Criminal Code, Contraventional Code, Tax Code), European normative acts (Directive 2011/16/EU, Directive (EU) 2018/843), the jurisprudence of the Supreme Court of Justice of the Republic of Moldova, judgments of the European Court of Human Rights in the cases *Epidavr S.R.L. v. the Republic of Moldova* [7], *Tasoncom S.R.L. v. the Republic of Moldova* [8] and *Avicola Vulcănești S.A. v. the Republic of Moldova* [9], as well as national and international specialized literature.

Discussion and results obtained. Any act committed, to be recognized as a crime, must meet the essential characteristics provided by law: social danger, criminal illegality, guilt, and punishability. In the case of tax evasion, the legislator opted for a dual incrimination, distinct depending on the subject and the gravity of the act, establishing both contraventional and criminal liability.

I. Evolution of the Normative Framework: From Art. 301 Contraventional Code to Art. 244¹ CC RM. An important stage in regulating liability for tax evasion was marked by Law No.206 of November 18, 2011 [6], through which amendments were made both to the CC RM and the Contraventional Code. Thus, liability was introduced for tax evasion by natural persons (not practicing entrepreneurial activity) both as a crime – Art. 244¹ CC RM, and as an administrative contravention – Art. 301 Contraventional Code [10, p. 73]. Previously, only tax evasion by enterprises, institutions, and organizations was criminally sanctioned in accordance with Art. 244 of the CC RM, being considered the most dangerous manifestation from a social perspective of the tax evasion phenomenon [11].

The initial content of Art. 301 Contraventional Code, as described in doctrine [10], provided that tax evasion by natural persons not practicing entrepreneurial activity, committed by evading the submission of the income tax declaration or by including distorted data in the declaration, constituted a contravention if the amount of income tax to be paid did not exceed 2,500 conventional units of fine (equivalent to 50,000 lei at that time). The same acts, if the tax amount exceeded this threshold, were qualified as a crime under Art. 244¹ CC RM. The contraventional sanction consisted of a fine from 2,000 to 3,000 lei, and the act was not sanctioned if the tax due was less than 100 c.u. (2,000 lei) [10, p. 74].

II. Repeal of Art. 301 Contraventional Code and Consolidation in Art. 244¹ CC RM. In the process of improving criminal and contraventional legislation, Art. 301 of the Contraventional Code was repealed by Law No.178 of 26.07.2018, and the respective acts were fully included in the sphere of criminal liability, under the incidence of Art. 244¹ CC RM. This legislative amendment had the effect of eliminating the contraventional character of tax evasion for natural persons and establishing a single value threshold for the incidence of criminal liability, in accordance with the provisions of Art. 244¹ CC RM. Thus, currently, tax evasion by natural persons not practicing entrepreneurial activity is exclusively a crime, without a distinct contraventional variant existing.

The distinction between criminal and contraventional liability in matters of tax evasion by economic entities continues to be made through the prism of value thresholds. According to Art. 244 para. (1) CC RM, tax evasion by enterprises, institutions, and organ-

izations, committed by intentionally including in accounting, tax, and/or financial documents, including electronic ones, manifestly distorted data regarding income or expenses not based on real operations or based on operations that did not exist, or by intentionally concealing taxable objects, accounting, tax, and/or financial documents, if the *cumulative amount of tax, duty, mandatory state social insurance contribution, or mandatory health insurance premium for a fiscal year exceeds 50 forecasted average monthly salaries per economy*, established by Government decision in force at the time of the act, constitutes a crime [11]. For the year 2026, the amount of the forecasted average monthly salary per economy is 17,400 lei, thus the value threshold for the incidence of criminal liability is 870,000 lei (50 x 17,400) [15]. If the cumulative amount does not exceed this threshold, the act may be sanctioned contraventionally, in accordance with the provisions of the Contraventional Code [12].

An important distinctive element is the active subject of the act. In the case of Art. 244 CC RM, the active subject can be both a natural person (the entity's manager or accountant) and the legal entity itself, to the extent that the law provides for criminal liability of the legal entity. Conversely, the tax contravention can be committed by both natural and legal persons, but the sanctions are exclusively pecuniary (fines) and do not entail criminal consequences such as a criminal record. Doctrine notes that tax evasion is a criminal offense affecting social relations regarding the formation of the national public budget through the non-fulfillment of tax obligations by taxpayers [13, p. 74].

Judicial practice reveals significant difficulties in applying Art. 244 CC RM, generated by the complexity of tax evasion schemes, the difficulty of proving intent, and the non-uniform interpretation of certain legal notions. According to author Al. Borodac, "the crime of tax evasion presents an increased social danger, as it affects the very existence of the state by undermining its financial base" [14, p. 187].

According to Art. 244 CC RM, the crime of tax evasion can be committed in several alternative normative modalities: by intentionally including in accounting, tax, and/or financial documents, including electronic ones, manifestly distorted data regarding income or expenses not based on real operations or based on operations that did not exist, or by intentionally concealing taxable objects, accounting, tax, and/or financial documents [15, p. 13].

According to the opinion expressed in doctrine by some authors, unreal operations are those that do not have their own legal existence, unlike operations that did not exist in fact, which refer to creating the appearance of an operation that in reality did not take place [15, p. 14]. Author A. Palii emphasizes that "the crime of tax evasion is generally carried out through the use of complex fraudulent methods, involving false documents and fictitious transactions" [16, p. 112].

A major problem concerns establishing the subjective element of the crime. In order for Art. 244 CC RM to be applicable, proof of the active subject's direct or indirect intent to evade the payment of taxes and duties is necessary. In practice, perpetrators often invoke "accounting errors" or "different interpretations of tax legislation" to justify non-payment of tax obligations, making it difficult to differentiate between a simple tax contravention and the crime of evasion. Author C. Bulai assesses that "the subjective element of the crime of tax evasion presupposes direct intent, manifested through awareness of the illicit nature of the actions and the will not to pay tax obligations" [17, p. 256].

A major challenge lies in quantifying the damage. In the case of economic entities using shell companies or offshore schemes, determining the exact amount due to the state budget is extremely difficult. Offshore zones (tax havens) are privileged territories

in the financial universe, where immense transactions can be carried out without any possibility of control, using banking institutions in these zones [18, p. 74].

Criminal investigation bodies investigate tax evasion cases "post factum", which often leads to the impossibility of seizing supporting documents and halting the investigation. The lack of effective international cooperation instruments and automatic exchange of information exacerbates this problem, allowing economic entities to hide assets in offshore jurisdictions.

Last but not least, another problem relates to the legal qualification of acts in the context of concurrence of offenses. In judicial practice, the question arises whether, when the main act is tax evasion and subsequently the sums are subjected to money laundering operations, we are in the presence of a real concurrence of offenses or a single act. In this regard, it has been shown that Art. 244 CC RM is applicable when tax evasion by enterprises, institutions, and organizations generates prejudicial consequences consisting of non-payment of tax obligations [15, p. 15].

In the context of the European path of the Republic of Moldova, significant legislative amendments have been made. Through Law No.136 of 06.06.2024 amending certain normative acts (amending the Criminal Code and the Contraventional Code, effective from 07.09.2024) [19], Art. 244 of the Criminal Code (Tax evasion of enterprises, institutions, and organizations) was revised, increasing the fine penalty applied to natural and legal persons, as well as the prison sentence for natural persons [20]. Thus, the new normative framework provides for more severe penalties for acts of tax evasion: if the cumulative amount of tax, duty, mandatory state social insurance contribution, or mandatory health insurance premium for a fiscal year exceeds 100 forecasted average monthly salaries per economy, established by Government decision in force at the time of the act, the act is punishable by a fine of 13,000 to 20,000 conventional units or imprisonment from 3 to 7 years, with deprivation of the right to hold certain positions or exercise a certain activity for a term of 2 to 5 years, and the legal person is punishable by a fine of 20,000 to 40,000 conventional units, with deprivation of the right to exercise a certain activity or liquidation of the legal person. According to Art. 244 para. (5) CC RM, the acts provided for in para. (1)-(4), committed by an organized criminal group or a criminal organization or in their favor, are punishable by imprisonment from 5 to 10 years, with a fine of 17,000 to 20,000 conventional units and deprivation of the right to hold certain positions or exercise a certain activity for a term of 3 to 5 years, and the legal person is punishable by a fine of 40,000 to 60,000 conventional units, with deprivation of the right to exercise a certain activity or liquidation of the legal person [11, Art. 244 para. (2)-(5)].

On May 27, 2024, the Republic of Moldova officially became a member of the Inclusive Framework on BEPS (Base Erosion and Profit Shifting), the largest and most important structure at the international level in the tax field, encompassing over 140 member countries [21; 22]. This accession represents an important step towards alignment with international standards of tax transparency and aims to develop mechanisms to combat tax evasion, improve tax rules, and ensure a transparent fiscal environment. Through Government Decision No.844 of December 18, 2024, the accession of the State Tax Service of the Republic of Moldova to the Inclusive Framework on BEPS was approved [23].

The Republic of Moldova has also strengthened its commitments within the Global Forum on Transparency and Exchange of Information for Tax Purposes. In 2023, the Republic of Moldova committed to carrying out the first reciprocal data exchanges according to the Common Reporting Standard (CRS) by 2024 [24]. Currently, over 120 countries carry out the same type of automatic exchange of information, and the Republic of

Moldova was authorized to carry out reciprocal exchanges of data on financial accounts starting in 2023, with the first exchange taking place in 2024 [25, p.3]. In December 2025, the Republic of Moldova announced it would include cryptocurrencies in the automatic exchange of information on financial accounts with other countries, updating the existing framework to reflect developments in the financial market and new tax risks, including those related to digital assets [26].

Regarding the jurisprudence of the Supreme Court of Justice of the Republic of Moldova (hereinafter SCJ RM) in matters of tax evasion, it reveals a non-uniform practice, especially concerning the individualization of punishment and the application of mitigating or aggravating circumstances. In some cases, courts have ordered conviction with suspension of sentence execution under supervision, while in others, effective prison sentences were opted for, without clear reasoning for the difference in treatment. In case file No.1ra-1528/17 (Decision of the Criminal Panel of October 11, 2017), the Court ordered the conditional suspension of sentence execution based on Art.90 Criminal Code, noting that the tax authority had found tax evasion by the enterprise. Conversely, in case file No.1ra-169/2021 (Decision of May 25, 2021), although the crime of tax evasion was committed on a particularly large scale, the court analyzed the possibility of conditional suspension of sentence execution but also highlighted the strict conditions under which it may be granted. This different approach, without explicit justification of the criteria leading to distinct solutions, illustrates the lack of a unitary practice.

Another aspect generating non-uniform practice is how courts evaluate mitigating and aggravating circumstances. For example, in case file No.4-1re-58/2017 (Decision of April 6, 2017), the Court retained several mitigating circumstances, ordering the conditional suspension of sentence execution. In contrast, in case file No.1ra-491/21 (Decision of April 14, 2021), the appellate court indicated that the individualization of criminal punishment must consider the concrete circumstances of the case but did not detail the extent to which these influenced the final decision. This lack of transparency in reasoning contributes to the unpredictability of sanctions.

In this context, the appellate court indicated that the defendant's actions constitute the elements of the crime provided for by Art. 244^1 para. (2) Criminal Code, which, according to Art. 16 Criminal Code, is classified as a minor offense, and, in accordance with the provisions of Art. 60 para. (1) lit. a) Criminal Code, Art. 332 para. (1) Criminal Procedure Code, thus the statute of limitations for criminal liability had expired in the case, as the crime was committed during the fiscal period 2012-2014, and a term of 2 years had expired from the date of the crime for being held criminally liable. Regarding the first instance court's solution, which ordered release from criminal liability due to the expiration of the statute of limitations, the appellate court noted that the trial court did not consider that such a solution can only be adopted when the statute of limitations for criminal liability is fulfilled at the time the criminal case is in the criminal investigation phase or before it is brought before the court, which in this case was not confirmed. Indeed, in the present case, the first instance court issued a conviction sentence, finding the defendant guilty of committing the crime provided for by Art. 244^1 para. (2) Criminal Code, consequently, as effect of the expiration of the statute of limitations, the trial court should have discussed either the issue of exemption from punishment or non-execution of the conviction sentence in connection with the statute of limitations.

This non-uniform practice has significant consequences for the principle of equality before the law and for trust in the justice system. Defendants who commit similar acts may receive completely different sanctions, depending on the court hearing the case,

which undermines the predictable and equitable nature of criminal law.

To remedy this situation, it is necessary for the SCJ RM to issue a guidance ruling establishing clear criteria for individualizing punishment in cases of tax evasion crimes, particularly regarding the application of mitigating and aggravating circumstances. It is also essential for courts to provide detailed reasoning for choosing a particular sanction to ensure transparency and coherence in judicial practice.

At the international level, the European Court of Human Rights has issued several relevant judgments in cases against the Republic of Moldova that directly or indirectly concern aspects of criminal liability for economic crimes.

Thus, in the case of *Epidavr S.R.L. v. the Republic of Moldova* (Application No.37129/16), the European Court found a violation of Art. 8 of the Convention (right to respect for private life and professional premises) in the context of searches conducted in a criminal investigation for tax evasion through "shell companies" [7]. The Court noted that the company was not named as a suspect in the criminal case and that the sole basis for the search was an internal report of the criminal investigation officer, which merely indicated that the company "could" be involved in the investigated activities. The Court remarked that the search warrants were imprecise, lacked convincing evidence, and did not justify the necessity of the measure, and their extremely general wording conferred an unlimited margin of discretion to the investigative bodies [7].

In the case of *Tasoncom S.R.L. v. the Republic of Moldova* (Application No.59627/15), the European Court sanctioned the violation of the right to a fair trial (Art. 6 § 1 of the Convention) and the right to property (Art. 1 of Protocol No.1) [8]. The Court found that the rejection of the revision request and the upholding of the tax conviction of the applicant company, although it had been definitively acquitted in a criminal trial for the same facts, deprived the acquittal of its useful effects and was contrary to the principle of legal certainty [8, p.1-2].

More recently, in the case of *Avicola Vulcănești S.A. v. the Republic of Moldova* (Application No. 1441/15), the European Court examined an application based on Article 6 § 1 of the Convention, regarding the principle of legal certainty in tax matters [9]. Also, the Constitutional Court of the Republic of Moldova, by Decision No.30 of March 5, 2026, dismissed as inadmissible the exception of unconstitutionality of Article 84 para. (1), Art. 261 para. (6), and Art. 228 para. (3) of the Tax Code [27].

These judgments underscore the importance of respecting procedural guarantees in matters of economic crimes and the need to ensure a balance between the effective fight against tax evasion and the protection of fundamental rights.

In the context of the European path of the Republic of Moldova, harmonizing criminal tax legislation with European Union standards represents a major challenge. Directive 2011/16/EU on administrative cooperation in the field of taxation [4] and Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [5] require Member States to adopt effective measures to combat tax evasion, including through adequate criminalization of serious acts.

A crucial aspect concerns the statute of limitations for criminal liability. The Court of Justice of the European Union was recently seised by Romanian judicial authorities with a request for a preliminary ruling in the case *Lin II* (C-280/25), concerning the interpretation of limitation periods for criminal liability in cases of tax evasion. This issue is particularly relevant for the Republic of Moldova, given the commitments undertaken under the Association Agreement with the European Union and the need to align national legislation with the jurisprudence of the Luxembourg Court.

Furthermore, the criminal liability of the legal person for tax evasion represents an important contemporary challenge. Although the legislation of the Republic of Moldova provides, in principle, for the criminal liability of the legal person, its application in cases of tax offenses is extremely low, in contrast to EU Member States, where this institution is frequently used. In Romanian doctrine, for example, it has been shown that the criminal liability of the legal person for the crime of tax evasion is expressly established, and this does not exclude the criminal liability of the natural person who contributed to the commission of the crime [28, p.448]. According to Art. 136 Romanian Criminal Code, all legal persons are criminally liable, except for the state and public authorities, for crimes committed in the realization of their object of activity or in the interest or on behalf of the legal person [28, p.448-461]. Moreover, the criminal liability of the legal person does not exclude the criminal liability of the natural person who contributed to the commission of the same act.

At the same time, it is noted that in the Republic of Moldova, the most widespread forms of legal organization are individual enterprises and limited liability companies, and according to data from the State Register of Legal Entities, as of March 28, 2021, there were 99,789 registered and active individual enterprises and 126,170 limited liability companies [29, p.340]. This reality requires increased attention from the legislator regarding the adaptation of the normative framework to the specifics of these entities.

Recent practice reveals large-scale cases of tax evasion. For example, in February 2026, two administrators and one accountant were investigated for tax evasion on a particularly large scale, with estimated damages exceeding 7,000,000 lei, within companies in the construction, architecture, and design fields [30]. Also, cases of tax evasion amounting to nearly three million lei within two transport companies have been reported [31]. These cases illustrate the scale of the evasion phenomenon and the need for effective countermeasures.

Conclusions. Following the analysis conducted, it is found that criminal liability for tax evasion by economic entities in the Republic of Moldova, mainly regulated by Art. 244 of the CC RM, represents a legal instrument of primary necessity in ensuring compliance with the constitutional obligation to contribute to public expenditure [1, Art. 58]. However, the study reveals a significant gap between the gravity of the evasion phenomenon – proven by damages of hundreds of millions of lei, recent cases of particularly large-scale evasion [30; 31], and frequent links to tax havens [18, p.74] – and the actual efficiency of current criminal sanctioning mechanisms.

The theoretical distinction between criminal and contraventional liability, although seemingly clear through the prism of the value threshold of 50 forecasted average monthly salaries per economy [11, Art. 244 para. (1)], proves insufficient in practice. The complexity of modern tax evasion schemes, involving shell companies, abusive transfer pricing, and offshore jurisdictions, makes it extremely difficult to accurately establish damages and prove intent, creating a grey area where many serious acts remain at the boundary of the contraventional.

This situation is all the more problematic as, according to doctrine, "the crime of tax evasion presents an increased social danger, as it affects the very existence of the state by undermining its financial base" [14, p.187].

From the perspective of judicial practice, the analysis of the decisions of the Supreme Court of Justice and cases resolved at the national level highlights a non-uniform application of the law, especially regarding the individualization of punishment. This inconsistency affects both the deterrent nature of sanctions and public trust in the judicial system. Also, the jurisprudence of the European Court of Human Rights draws attention

to the need for strict compliance with procedural guarantees during the criminal investigation phase and the principle of legal certainty.

An important legislative progress is represented by Law No.136/2024 [19], which tightened criminal sanctions for tax evasion, including by increasing the limits of fines and prison sentences for aggravated variants [11]. Moreover, the Republic of Moldova's accession to the Inclusive Framework on BEPS in May 2024 [21] and the commitments undertaken within the Global Forum on Transparency and Exchange of Information [24; 25] represent essential steps towards alignment with international standards.

However, the effective implementation of these instruments remains a major challenge. Automatic Exchange of Information (AEOI) requires not only bilateral and multilateral agreements but also adequate technical and human capacities at the level of the State Tax Service and criminal investigation bodies. Also, the criminal liability of the legal person, although provided for in principle, is rarely applied in cases of tax offenses, in contrast to states like Romania, where this institution is expressly established and frequently used [28, p.448-449].

Thus, we consider that the current regulation of criminal liability for tax evasion by economic entities in the Republic of Moldova is at a crossroads. On the one hand, the recent legislative amendments and assumed international commitments are commendable and reflect a genuine political will to combat the phenomenon. On the other hand, without a profound reform of the criminal and procedural criminal framework and without a significant strengthening of institutional capacity, these measures risk remaining ineffective in the face of increasingly sophisticated cross-border schemes.

At the same time, we consider that a first priority direction for action is the ***proper clarification of the criteria for distinguishing between criminal and contraventional liability***. In our opinion, the current value threshold – 50 forecasted average monthly salaries per economy – is adequate to distinguish between a negligent accounting error and an organized tax fraud, but its application in practice requires additional qualitative criteria, such as: the existence of simulated cross-border transactions, the use of non-cooperative jurisdictions for tax purposes, or the involvement of interposed entities without real economic substance.

The second direction concerns the ***effective criminal liability of the legal person***. Although the Criminal Code of the Republic of Moldova provides for this form of liability, its application in cases of tax evasion is almost non-existent. We consider it necessary to have explicit regulation, similar to the Romanian model, allowing for the application of sanctions such as fines proportional to turnover, prohibition from participating in public procurement, placement under judicial supervision, or, in the most serious cases, dissolution of the legal entity with subsidiary patrimonial liability of the founders, administrators, and accountant.

The third direction refers to ***strengthening international cooperation and digital tools***. Accession to the Inclusive Framework on BEPS and implementation of automatic exchange of information are correct steps but must be complemented by operational cooperation mechanisms between criminal investigation bodies in different jurisdictions.

Finally, we believe that the true challenge is not only of a legislative nature but also cultural and institutional. Effectively combating tax evasion requires a paradigm shift: from a reactive approach, investigating "post factum", to a proactive one, based on risk analysis and prevention. It is also essential to strengthen the trust of citizens and the business environment in the tax system, so that the payment of taxes and duties is perceived not as a burden but as a contribution to the common good.

In conclusion, although the current normative framework of the Republic of Moldova regarding criminal liability for tax evasion by economic entities has made notable progress – especially through Law No.136/2024 and the assumed international commitments – major structural deficiencies remain. The prompt adoption of the recommended measures – particularly within the next 2-3 years, in line with the review cycles of EU and OECD standards – could transform the current vulnerability into a regional model of good practice.

Bibliographical references

1. Constituția Republicii Moldova. nr.1 din 29 iulie 1994. În: Monitorul Oficial al Republicii Moldova, 1994, art. 58.
2. Șaguna Dan Drosu. Drept financiar și fiscal. Vol.II, București: Ed. All Beck, 1997. 414 p.
3. Gorobievschi Svetlana. Evaziunea fiscală și formele de combatere. În: Administrarea publică, 2005, pp. 60-65.
4. Directiva 2011/16/UE a Consiliului din 15 februarie 2011 privind cooperarea administrativă în domeniul fiscal. În: Jurnalul Oficial al Uniunii Europene, L 64, 11.03.2011, pp. 1-12.
5. Directiva (UE) 2018/843 a Parlamentului European și a Consiliului din 30 mai 2018 de modificare a Directivei (UE) 2015/849 privind prevenirea utilizării sistemului financiar în scopul spălării banilor sau finanțării terorismului. În: Jurnalul Oficial al Uniunii Europene, L 156, 19.06.2018, pp. 43-47.
6. Legea nr.206 din 18 noiembrie 2011 pentru modificarea şi completarea unor acte legislative. În: Monitorul Oficial al Republicii Moldova, 2011, nr.205-207.
7. Hotărârea Curții Europene a Drepturilor Omului în cauza Epidavr S.R.L. c. Republicii Moldova (cererea nr.37129/16). Disponibil: https://www.lhr.md/ro/2026/04/hot-r-rea-n-cauza-epidavr-s-r-l-contra-moldovei/.
8. Hotărârea Curții Europene a Drepturilor Omului în cauza Tasoncom S.R.L. c. Republicii Moldova (cererea nr.59627/15).22 octombrie 2024. Disponibil: https://agent.gov.md/files/9612.
9. Hotărârea Curții Europene a Drepturilor Omului în cauza Avicola Vulcănești S.A. c. Republicii Moldova. Juriștii pentru Drepturile Omului, aprilie 2026. Disponibil: https://www.lhr.md/ro/2026/04/hot-r-rea-n-cauza-avicola-vulc-ne-ti-s-contra-moldovei/.
10. Botnaru Natalia. Răspunderea contravențională privind evaziunea fiscală. În: Revista Națională de Drept, 2012, nr.9, pp. 73-75.
11. Codul penal al Republicii Moldova, nr.985 din 18.04.2002. În: Monitorul Oficial al Republicii Moldova, 2002, nr.128-129 (cu modificările ulterioare, inclusiv Legea nr.136/2024).
12. Codul contravențional al Republicii Moldova, nr.218 din 24.10.2008. În: Monitorul Oficial al Republicii Moldova, 2009, nr.3-6.
13. Bargan Ion. Analiza juridico-penală a evaziunii fiscale a întreprinderilor, instituțiilor și organizațiilor. În: Analele științifice ale USM. Seria „Lucrări studențești", Ediția 2022, pp.74-75.
14. Borodac Alexandru. Drept penal. Partea specială. Chișinău: Tipografia Centrală, 2018. p.187 .
15. Stati Vitalie. Răspunderea penală pentru evaziunea fiscală a întreprinderilor, instituțiilor și organizațiilor (art. 244 CP RM). Partea II. În: Revista Națională de Drept, 2012, nr.8, pp. 13-18.
16. Palii A. Drept penal al afacerilor. Chișinău: Ed. Epigraf, 1999. 176 p.
17. Bulai Constantin. Drept penal. Partea generală. București: Ed. Juridică, 1996. 256 p.
18. Larii Iurie, David Mihail. Zonele offshore (paradisurile fiscale) și rolul lor în spălarea

banilor. În: Protecția drepturilor și libertăților fundamentale ale omului în procesul asigurării ordinii și securității publice, Ediția a VI-a, 08 decembrie 2022. Chișinău: Academia „Ștefan cel Mare" a MAI, 2022, pp.74-84.
19. Legea nr.136 din 6 iunie 2024 pentru modificarea unor acte normative (modificarea Codului penal și a Codului contravențional). În: Monitorul Oficial al Republicii Moldova, 2024, nr.245-246, (în vigoare din 07.09.2024).
20. Codul fiscal al Republicii Moldova, nr.1163 din 24.04.1997. În: Monitorul Oficial al Republicii Moldova, 1997, nr.62 (cu modificările ulterioare).
21. Republica Moldova a devenit membru al celei mai importante structure la nivel internațional în domeniul fiscal. Agenția Informațională de StatMoldpres, din 29.05.2024. Disponibil: https://news.gov.md/news/2024/05/29/24003980.
22. Cuttone Vincenzo, Ghilimutdinov Nina. Aspecte privind fapta de evaziune fiscală și tendințele legislative pentru contracararea acesteia în spațiul european. În: Statul de Drept și reziliența economică în contextul aderării Republicii Moldova la Uniunea Europeană, din 16.05.2014. Chișinău: CEP USM, 2024, pp.405-412.
23. Hotărârea Guvernului nr.844 din 18 decembrie 2024 privind accederea Serviciului Fiscal de Stat al Republicii Moldova la Cadrul Incluziv privind erodarea bazei impozabile și a transferului de profituri (BEPS). În: Monitorul Oficial al Republicii Moldova, 2024, nr.533-535, art. 965.
24. Global Forum Secretariat supports Moldova in strengthening its confidentiality and data safeguards framework and implementing automatic exchange of information OECD, 2023. Disponibil: https://www.oecd.org/en/networks/global-forum-tax-transparency/news-events/2023/global-forum-secretariat-supports-moldova-in-strengthening-its-confidentiality-and-data-safeguards-framework-and-implementing-automatic-exchange-of-information.html.
25. Global Forum on Transparency and Exchange of Information for Tax Purposes: Moldova 2024 (Second Round, Combined Review). OECD, 2024.
26. Enhanced tax transparency: Moldova to report accounts, cryptocurrencies. Moldpres, din 10.12.2025. Disponibil: https://www.moldpres.md/eng/economy/enhanced-tax-transparency-moldova-to-report-accounts-cryptocurrencies (accesat 08.04.2026).
27. Curtea Constituțională a Republicii Moldova. Decizia nr.30 din 05.03.2026 privind excepția de neconstituționalitate a articolelor 84 alin. (1), 261 alin. (6) și 228 alin. (3) din Codul fiscal. Disponibil: https://www.constcourt.md/ccdocview.php?tip=decizii&docid=1900&l=ro (accesat 08.04.2026).
28. Mareș Mihai. Răspunderea penală a persoanei juridice în dreptul român pentru infracțiunea de evaziune fiscală. În: Conferința „Infracțiunea -- Răspunderea penală -- Pedeapsa. Drept și Criminologie". Chișinău: CEP USM, 2021, pp. 448-461.
29. Buzdugan Tudor. Răspunderea penală a organelor de conducere a persoanei juridice pentru săvârșirea infracțiunii de evaziune fiscală a întreprinderilor, instituțiilor și organizațiilor. În: Conferința „Infracțiunea -- Răspunderea penală -- Pedeapsa. Drept și Criminologie". Chișinău: CEP USM, 2021, pp. 338-344.
30. Evaziune fiscală de peste șapte milioane de lei: Doi administrator și un contabil, sub anchetă. Moldova 1, 19.02.2026. (online). Disponibil: https://moldova1.md/p/69136/evaziune-fiscala-de-peste-sapte-milioane-de-lei-doi-administratori-si-un-contabil-sub-ancheta (accesat 08.04.2026).
31. Evaziune fiscală în sumă de aproape trei milioane de lei: Două companii de transport, anchetate. Radio Moldova, 20.02.2026. (online). Disponibil: https://radiomoldova.md/p/69136/ (accesat 08.04.2026).

CZU 343.12/.13:341.231.14 **DOI: https://doi.org/10.5281/zenodo.20825036**

THE PURPOSE OF APPLYING THE MEASURE OF PREVENTIVE ARREST IN ACCORDANCE WITH RESPECT FOR THE RIGHT TO PRIVATE LIFE

Daniel CRISTEA,
PhD, Chief Police Commissioner,
Criminal Investigation Office, Buzau County Police Inspectorate,
Romania
ORCID: 0000-0002-5786-2619

Laurenţiu Gabriel CÎRSTEA,
PhD student,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Instructor Lecturer, Schengen Multifunctional Training Centre, Buzău,
Romania
ORCID: 0009-0001-2752-7940

Abstract

The issue of respecting the right to privacy and guaranteeing it during the criminal prosecution phase remains a sensitive subject for states such as Romania and the Republic of Moldova. Research and resolving the deficiencies found contribute to improving the quality of the act of justice, and not only, and to strengthening citizens' trust in state institutions. From this point of view, the research project is primarily due to the review and analysis of the establishment of guarantees that benefit subjects to whom preventive arrest is applied, and not only, and in terms of assessing the applicability of criminal procedural norms by the competent bodies of the states, from this point of view, of respecting the right to privacy of accused or defendants to whom preventive arrest is applied, according to the legislation of the Republic of Moldova or defendants, according to the legislation of Romania. In this sense, the importance is determined precisely by the need to identify legislative gaps that affect this right to privacy of accused/defendants to whom preventive arrest is applied.

The study aims to establish the directions and trends of criminal procedure in ensuring and realizing the right to privacy of accused/defendants to whom preventive arrest is applied. In this regard, practical aspects of respecting the right to privacy of accused/defendants to whom preventive arrest is applied are also addressed, in order to highlight the technical and procedural difficulties faced by law enforcement agencies, in order to ensure respect for the right to privacy in the practice of applying criminal procedure norms.

Keywords: protective measures, right to privacy, criminal prosecution phase, accused, defendants, preventive arrest.

SCOPUL APLICĂRII MĂSURII ARESTULUI PREVENTIV ÎN CONCORDANȚĂ CU RESPECTAREA DREPTULUI LA VIAȚA PRIVATĂ

Abstract

Problema respectării dreptului la viața privată și garantarea acesteia în faza urmăririi penale rămâne un subiect sensibil pentru state precum România și Republica Moldova. Cercetarea și soluționarea deficiențelor constatate contribuie la îmbunătățirea calității actului de justiție, și nu numai, și la consolidarea încrederii cetățenilor în instituțiile statului. Din acest punct de vedere, proiectul de cercetare se datorează în primul rând revizuirii și analizării stabilirii garanțiilor de care beneficiază subiecții față de care este aplicat arestul preventiv, și nu numai, și în privința evaluării aplicabilității normelor procesual penale de către organele competente ale statelor, din acest punct de vedere, al respectării dreptului la viața privată învinuiților sau inculpaților față de care este aplicat arestul preventiv, potrivit legislației din Republica Moldova sau inculpaților, potrivit legislației

din România. În acest sens, importanța este determinată tocmai de necesitatea identificării lacunelor legislative care afectează acest drept la viața privată învinuiților/inculpaților față de care este aplicat arestul preventiv.

Studiul urmărește de a se stabili direcțiile și tendințele procesual-penale pe linia asigurării și realizării dreptului la viața privată învinuiților/inculpaților față de care este aplicat arestul preventiv. Sunt abordate în acest sens și aspecte practice ale respectării dreptului la viața privată învinuiților/inculpaților față de care este aplicat arestul preventiv, în scopul reliefării dificultăților tehnice și procesuale cu care se confruntă organele de drept, pentru a se asigura respectarea dreptului la viața privată în practica de aplicare a normelor procesual penale.

Cuvinte-cheie: măsuri de protecție, dreptul la viața privată, faza urmăririi penale, învinuiți, inculpați, arest preventiv.

Introduction. The study on the purpose of applying the measure of preventive arrest in Romania and the Republic of Moldova, analyzed from the perspective of respecting the right to privacy, highlights a series of essential aspects for understanding how the two legal systems balance the need for deprivation of liberty, from the point of view of fundamental rights.

The term accused/defendant in the legislation of the Republic of Moldova and defendant in the legislation of Romania, refers to a procedural capacity (from the Latin legitimatio ad causam), namely the person accused of committing a crime in a criminal trial, but who has not yet been sent to trial. Preventive arrest represents a restrictive procedural measure in criminal law, by which a person is deprived of liberty for a certain period, before a final judgment is pronounced. This latter measure, even if it must be taken by the authorities to prevent the commission of new crimes, or the influence of witnesses and the destruction of evidence, is not often its application is ordered subjectively by the criminal prosecution bodies themselves. The purpose of the study is to identify and clarify the current situation regarding the measure of preventive arrest, by presenting practical situations, and the application of norms, which lead to the respect and not to the violation and failure to protect the right to private life. Although both states share similar legal traditions and are influenced by European standards, the way in which preventive arrest is applied presents significant differences, both at the legislative and jurisprudential levels.

Methods and materials applied. The study on the purpose of applying the measure of preventive arrest in Romania and the Republic of Moldova, in accordance with the respect for the right to private life, is based on a complex and interdisciplinary methodology, which combined:

- *Legal analysis*: by examining the provisions of the CPC ROM and the CPC RM regarding preventive arrest; analysis of constitutional guarantees regarding individual freedom and privacy; assessment of the conformity of national legislation with ECHR standards (Art. 5 and Art. 8), allowing the identification of differences and similarities between the two legal systems, as well as possible legislative gaps;
- *Comparative research*: analyzing the ways in which Romania and the Republic of Moldova regulate and apply the measure of preventive arrest;
- *Examination of jurisprudence and doctrinal evaluation.*

Discussions and results obtained. The measure of preventive arrest represents one of the most intrusive interventions of the state in the sphere of individual freedom and private life. By its nature, it involves the deprivation of liberty of a person who has not been definitively convicted, which requires a rigorous analysis of its justification, proportionality and necessity. In Romania and the Republic of Moldova, the regulations on preventive arrest are influenced by both domestic legal traditions and European standards, in particular those established by the European Convention on Human Rights

(ECHR). In this context, respect for the right to private life becomes an essential criterion in assessing the legality and legitimacy of the measure.

Preventive arrest is regulated in Romania by the CPC, which defines it as a preventive measure depriving of liberty, applicable only under conditions strictly determined by law [1]. In the Republic of Moldova, the regulation is similar, the CPC providing that preventive detention may be ordered only when there are reasonable suspicions and concrete procedural risks [2]. In both systems, the measure is exceptional in nature, being subject to the principle of subsidiarity: it can only be ordered if other preventive measures are insufficient.

This approach reflects the standards of the ECHR, which has consistently established that preventive detention must be justified by "relevant and sufficient" reasons, and the mere gravity of the accusation cannot constitute an autonomous basis for deprivation of liberty [3].

The right to private life, enshrined in Art. 26 of the Romanian Constitution, Art. 28 of the Constitution of the Republic of Moldova and Art. 8 of the ECHR, is inherently affected by the application of preventive detention. Deprivation of liberty in this sense implies limiting contact with the family, monitoring correspondence and conversations, restricting freedom of movement, and exposure to conditions of detention that may affect human dignity. In this regard, the ECHR has emphasized that interferences with private life must be proportionate and necessary in a democratic society, and the state has the obligation to ensure conditions of detention compatible with respect for the dignity of the person [4].

In Romania, the preventive arrest measure is applied to the defendant, against whom the criminal action has been initiated. The conditions and cases for applying the preventive arrest measure are mentioned in Art. 223 of the CPC ROM, and the situations that require this measure are provided for in par. (1) letters a)-d). Why are they mentioned in the study, since the legislation justifies the application of the preventive arrest measure and the intrusion into the defendant's right to private life, a measure that is fully justified in the situation described in Art. 223[1] par. (1) letters a)-d) CPC ROM. The ECtHR examples

[1] (1) The measure of preventive arrest may be taken by the judge of rights and liberties, during the criminal investigation, by the judge of the preliminary chamber, in the preliminary chamber procedure, or by the court before which the case is pending, during the trial, only if the evidence shows reasonable suspicion that the defendant has committed a crime and one of the following situations exists: a) the defendant has fled or hidden, in order to evade the criminal investigation or the trial, or has made preparations of any kind for such acts; b) the defendant attempts to influence another participant in the commission of the crime, a witness or an expert or to destroy, alter, hide or steal material means of evidence or to determine another person to engage in such behavior; c) the defendant exerts pressure on the injured person or tries to reach a fraudulent agreement with him/her; d) there is a reasonable suspicion that, after the initiation of criminal proceedings against him, the defendant has intentionally committed a new crime or is preparing to commit a new crime. (2) The measure of preventive arrest of the defendant may also be taken if, from the evidence, there is reasonable suspicion that he has committed an intentional crime against life, a crime that caused bodily harm or death to a person, a crime against national security provided for by the Criminal Code and other special laws, a drug trafficking crime, a crime under the regime regarding doping substances, carrying out illegal operations with precursors or other products likely to have psychoactive effects, a crime regarding non-compliance with the regime of weapons, ammunition, nuclear materials, explosive materials and precursors of restricted explosives, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering, counterfeiting of coins, stamps or other values, blackmail, rape, illegal deprivation of liberty, tax evasion, insult, judicial insult, a corruption crime, a crime committed through computer systems or means of communication. electronic or another crime for which the law provides for a prison sentence of 5 years or more and, based on the assessment of the seriousness of the act, the manner and circumstances of its commission, the environment and environment from which it comes, the criminal record and other circumstances concerning the person, it is found that his deprivation of liberty is necessary to eliminate a state of danger to public order. (3) With respect to the defendant who, in the same case, during the criminal investigation, the preliminary chamber procedure or the trial, has been previously arrested on remand or for whom house arrest was previously ordered, the measure of preventive arrest may be ordered only if new grounds have arisen that make his deprivation of liberty necessary.

mentioned by author Daniel Cristea fully justify the application of the preventive arrest measure:

➢ "when there is a risk that the accused will not appear for trial: *Stögmüller v. Austria*, of 10 November 1969, Series A No.9, para. 15;

➢ when there is a risk that the accused, if released, will take measures that would prejudice the administration of justice: *Wemhoff v. Germany*, of 27 June 1968, Series A No.7, para. 14;

➢ or will commit other crimes: *Matznetter v. Austria*, of 10 November 1969, Series A No.10, para. 9;

➢ or will cause public disorder: *Letellier v. France*, of 26 June 1991, Series A No.207, para. 51;

➢ influences the proper conduct of the proceedings: *Trzaska v. Poland*, of 11 July 2000, No.25792/94, para. 65" [5, p.418-419].

Even though Art. 8 of the ECHR states that "a person has the right to live free from restrictions imposed by the state, that private life is superior to public life" [6, p.3], the legislative provisions provided for in Art. 223 of the CPC ROM are clearly defined and justify this measure of preventive arrest in view of the common collective objective.

However, the right to privacy, when applying the measure of preventive arrest, can be violated through a multitude of actions. For example:

- Access to personal data during the criminal investigation phase, which is non-public. In this sense, the disclosure of personal information about the defendant, such as correspondence or medical data, without his consent, constitutes a violation of privacy;
- Publicity of the case, by transmitting and disseminating information about the defendant in the media, including images or personal details, which lead to the violation of the right to privacy. E.g.: the ECtHR case *Batiashvili v. Georgia* [7], in which the recordings made "were sent to a television channel and broadcast before the applicant was charged and arrested", as a result of influencing the decision;
- During technical surveillance, the use of means of interception of conversations or video surveillance without respecting the legal conditions and their transmission to the press; E.g.: the ECtHR case *Căşuneanu v. Romania* [8], illustrates the need to apply the provisions of Art. 4, para.(1), letter (f) of EU Directive 2016/680[2] [9], in relation to "leaks to the press since the commencement of the criminal proceedings against the applicant, since fragments of the conversations between the defendants, obtained as a result of telephone interceptions during the surveillance operation within the framework of the criminal investigation, carried out prior to the criminal proceedings, were broadcast, which appeared in the newspapers before the applicant and the co-defendant were brought to trial";
- Conditions in detention centres, which are due to lack of space or constant surveillance in pre-trial detention centres. E.g.: the ECtHR case *Polgar v. Romania* [10], which addressed inadequate conditions of detention in prisons in Romania, indirectly affecting the right to private life.

In the Republic of Moldova, the measure of preventive arrest constitutes an exceptional measure, which may be applied, as the case may be, to the suspect, accused or defendant, when other preventive measures are not sufficient to ensure the proper conduct of the criminal trial. It may be ordered if there are reasonable grounds to believe that he has committed a crime and if certain conditions are met, such as:

[2] Member States shall ensure that personal data: are processed in a manner that ensures adequate security of personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, by taking appropriate technical or organisational measures

– Preventing evasion from criminal prosecution or trial;
– Preventing the influence of witnesses or the destruction of evidence;
– Preventing the commission of new crimes.

The concordance with the right to private life has been emphasized in many studies and cases, with reference to the application of the measure of preventive arrest, on the occasion of which the respect for this right to private life is essential in a state governed by law. In this regard, the following issues identified concern the violation of the right to private life:

– Excessive duration of preventive arrest. For example, the case of *Buzadji v. Moldova* [11], concerning reasonable suspicion, which is a sine qua non for a lawful detention, is not sufficient to justify the extension of detention;

– Lack of adequate reasoning. For example, in the case of *Boicenco v. Moldova* [12], the courts, when ordering the extension of detention, did not indicate the reasons considered to have impeded the trial or that other crimes might be hidden or committed. In this regard, with regard to decisions on preventive detention, the judges do not sufficiently analyse the alternative measures that could be applied;

– Regarding the disclosure of confidential information: the case of *Batiashvili v. Georgia* [13] – the recordings made "were sent to a television channel and broadcast before the applicant was charged and arrested".

– Regarding the extension of pre-trial detention as an excessive duration of pre-trial detention, in the case of *Pînzari v. Republic of Moldova* [14], the measure was contrary to legal provisions and considered a violation of the right to liberty and security, which indirectly affected the applicant's private life.

The application of the measure of preventive arrest is always based on legal principles, as a balance between individual rights and the public interest in order to protect the right to private life itself. In this sense, compliance with proportionality with the intended purpose is the measure that must be applied only if it is absolutely necessary to protect the public interest. Therefore, the causes for the proper conduct of the criminal trial, such as the prevention of crimes or the protection of evidence, are necessary elements to order the measure of preventive arrest. Of course, the measures are provided for by law, they must be applied transparently, so that the method of application is clear by justifying the measure, respecting all the conditions of the right to private life. We mention the right to fairness in the application of preventive arrest; this right ensures protection against abuses and the right to private life.

The application of the measure of preventive arrest and the right to private life, however, required clear rules, which are not often violated. Examples in which the measure of preventive detention can lead to a violation of the right to private life are diverse, from the public disclosure of personal information during the criminal investigation phase, which is non-public, to excessive surveillance during the period of preventive detention, are measures that represent unjustified intrusions into private life. At the same time, invasive body examinations during preventive detention procedures, which are not justified by real needs, are a violation of dignity and private life; inadequate conditions in detention, due to narrow spaces during preventive detention, constitute violations of private life. Last but not least, the effect produced by the measure of preventive detention, such as the restriction and limitation of the right to communicate with the family, constitutes a violation of the right to private life.

Such situations have been challenged before the European Court of Human Rights, the Court which has repeatedly established that detention measures must respect both

human dignity and the right to private life.

We can say that Romanian courts have evolved significantly in justifying the measure of preventive detention, especially after repeated convictions at the ECHR. Decisions such as *Calmanovici v. Romania* [15], however, have determined a paradigm shift, with courts being obliged to provide individualized motivations and to analyze alternative measures. However, practice shows that sometimes stereotyped formulas are still used, and the duration of preventive detention can become excessive.

The Republic of Moldova was, however, the subject of one of the most important ECHR rulings on pre-trial detention: *Buzadji v. Republic of Moldova* [16], in which the Court established that, after a certain period, the authorities must demonstrate additional reasons for maintaining detention. Although the legislation has been amended, judicial practice continues to face problems regarding the excessive duration and insufficient justification of the measure.

Thus, the application of pre-trial detention in the two states highlights a constant tension between the need to ensure the proper conduct of the criminal trial and the protection of fundamental rights. Although the legislation is generally in line with European standards, judicial practice shows, as mentioned above, that the measure is sometimes applied too lightly, the justifications are insufficient, and alternative measures are underused.

However, alternative measures to pre-trial detention represent an essential tool in the architecture of the modern criminal process, with the role of ensuring the balance between the need for the efficient conduct of the criminal prosecution and respect for the fundamental rights of the individual. In the context of European developments and the jurisprudence of the European Court of Human Rights (ECHR), both Romania and the Republic of Moldova have had to adapt their legislation and judicial practice to reduce excessive reliance on preventive detention and to promote less intrusive measures compatible with the right to privacy. Although the CPC ROM provides for a series of alternative measures, such as judicial control, judicial control on bail, house arrest [17], these measures must be designed to limit the interference with the person's liberty, allowing the authorities, in accordance with the principle of proportionality, to prevent procedural risks, according to which deprivation of liberty should be used only as a last resort, in the RM courts increasingly resort to preventive detention, even if the CPC RM regulates measures similar to the CPC ROM, such as provisional release under judicial control, provisional release on personal guarantee or bail, or house arrest [18].

Conclusions. The application of the measure of preventive arrest in Romania and the Republic of Moldova, in accordance with the respect for the right to privacy, highlighted the complexity of the balance between the need for the efficient conduct of the criminal trial and the protection of the fundamental rights of the person. The comparative analysis of the two legal systems, corroborated with European and international standards, allowed the formulation of general conclusions that reflect both the progress made and the persistent challenges.

Pre-trial arrest being one of the most intrusive procedural measures, its application must be strictly necessary, proportionate and justified. Romania and the Republic of Moldova have made important progress, but in order to ensure full respect for the right to privacy, a paradigm shift was necessary, from a culture of preventive detention to a culture of procedural guarantees and the protection of fundamental rights.

From the perspective of the right to privacy, preventive arrest, as it turns out, can affect the confidentiality of the person's life, through excessive surveillance before the

application of the measure and can lead to separation from the family and the interruption of social relations.

This right to privacy may, however, be restricted, in accordance with the legislation, only if the restriction is proportionate, necessary and provided for by law. In this regard, judges must carefully assess whether the measure of preventive detention is justified in order to restrict the right to privacy.

The study demonstrates that the application of the measure of preventive detention in Romania and the Republic of Moldova is thus at the intersection between the need to protect public order and the state's obligation to respect the fundamental rights of the individual. Although progress is evident, especially under the influence of the ECHR jurisprudence, important challenges persist related to the justification of the measure, the length of detention, the conditions of detention and the insufficient use of alternative measures.

However, respect for the right to privacy is not an obstacle to justice, but an essential condition for the legitimacy and fairness of the criminal process. Both Romania and the Republic of Moldova must continue reforms to ensure a real balance between the efficiency of the criminal process and this protection.

Pre-trial detention in both states must be regulated as a measure of last resort, applicable only when other preventive measures are not sufficient to ensure the proper conduct of the criminal trial.

Bibliographical references

1. Criminal Procedure Code of Romania. In: Official Gazette No.486 of July 15, 2010, Art. 202-223.
2. Criminal Procedure Code of the Republic of Moldova. In: Official Gazette No.248-251 of 05.11.2013, Art. 699, amended LP No.5 of 12.02.26, OG No.96-99 of 26.02.26, Art.58. In force from 26.02.26, Art. 175-186.
3. ECtHR Judgment Letellier v. France, of 26.06.1991, No.12369/86. Available: https://hudoc.echr.coe.int/tur?i=001-57678 (accessed 28.02.2026).
4. ECtHR Judgment Iacov Stanciu v. Romania, of 10.07.2012, No.35972/05. Available: file:///C:/Users/User/Desktop/Downloads/CASE%20OF%20IACOV%20STANCIU%20v.%20ROMANIA%20-%20[Romanian%20Translation]%20by%20the%20SCM%20 Romania %20and%20IER.pdf (accessed 28.02.2026).
5. Cristea D. Criminal Code. Criminal Procedure Code. Iași: Ed. Lumen, 2024, p.418-419.
6. Butnaru I. Multidimensionality and complexity of the right to intimate, family and private life. Available: https://ibn.idsi.md/ro/vizualizare_articol/124758 (accessed 28.02.2026).
7. ECtHR Judgment Batiashvili v. Georgia, of 10.10.2019, No.8284/07. Available: http://hudoc. echr.coe.int/eng?i =001-196374 (accessed 28.02.2026).
8. ECtHR Judgment Căşuneanu v. Romania, of 16 April 2013, No.22018/10. Available: http://ier.gov.ro/wp-content/uploads/cedo/Casuneanu-impotriva-Romaniei.pdf (accessed 28.02.2026).
9. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data by Competent Authorities for the Purposes of the Prevention, Detection, Investigation or Prosecution of Criminal Offences or the Execution of Criminal Penalties, and on the Free Movement of such Data, and Repealing Council Framework Decision 2008/977/JHA, OJ L 119. Available: https://eur-lex.europa.eu/legal-content/ro/TX-

T/?uri=CELEX:32016L0680 (accessed 28.02.2026).
10. ECtHR Judgment Polgar v. Romania, of 20 July 2021, No.39412/19. Available: https://www.csm1909.ro/ViewFile.ashx?guid=7d1c4685-ca13-47c1-816e-1df6e4ddd7a9-InfoCSM (accessed 28.02.2026).
11. ECtHR Decision Buzadji v. Moldova, of 05 July 2016, No.23755/07. Available: https://hudoc.echr.coe.int/eng?i=001-176063 (accessed 28.02.2026).
12. ECtHR Decision Boicenco v. Moldova, of 11 July 2006, No.41088/05. Available: https:///C:/Users/User/Desktop/Downloads/BOICENCO%20v.%20MOLDOVA%20-%20[Romanian%20Translation]%20by%20the%20Ministry%20of%20Justice%20of%20the%20Republic%20of%20Moldova.pdf (accessed 28.02.2026).
13. ECtHR Batiashvili v. Georgia, of 10.10.2019, No.8284/07. Available: http://hudoc. echr.coe.int/eng?i =001-196374 (accessed 28.02.2026).
14. ECtHR Pînzari v. Moldova, of 27 September 2018, No.46663/14. Available: https://hudoc.echr.coe.int/eng?i=001-186714 (accessed 28.02.2026).
15. ECtHR Judgment Calmanovici v. Romania, of 01.07.2008, No.42.250/02. Available: https://hudoc.echr.coe.int/?i=001-122630 (accessed 28.02.2026).
16. ECtHR Judgment Buzadji v. Republic of Moldova, of 05.07.2016, No.23755/07. Available: https://hudoc.echr.coe.int/eng?i=001-176063 (accessed 28.02.2026).
17. Romanian Criminal Procedure Code. In: Official Gazette No.486 of July 15, 2010, Art. 211-218.
18. Criminal Procedure Code of the Republic of Moldova. Published in: Official Gazette No.248-251 of 05.11.2013, Art. 699, amended LP No.5 of 12.02.26, MO: 96-99/26.02.26 Art.58; in force 26.02.26, Art. 185-186.

CZU: 343.359.2:336.74(478) **DOI: https://doi.org/10.5281/zenodo.20825156**

THE NOTION OF MONETARY SIGNS IN THE CONTEXT OF THE OFFENCES PROVIDED IN ARTICOLE 236 OF THE CRIMINAL CODE

Carmen DICHII,
PhD Candidate, Moldova State University,
Prosecutor, Edineț Prosecutor's Office, Ocnița Territorial Unit
Republic of Moldova
ORCID: 0009-0000-7522-7347

Abstract

The article seeks to explain what is meant by monetary signs within the meaning of Art. 236 of the Criminal Code of the Republic of Moldova and why this notion is essential for understanding the legal substance of the offences involving the manufacturing or putting into circulation of counterfeit banknotes or titles of false values.

The analysis focuses on banknotes and metallic coins – including jubilee and commemorative ones – issued by the National Bank of Moldova or by the monetary authorities of other states or state unions. The investigation highlights that these entities cannot be reduced to mere material objects, since their economic and legal function is to guarantee the stability and credibility of payments.

The main aim of the article is to determine the semantic content of the notion of monetary signs through an examination of the relevant normative acts from the Republic of Moldova, from other states, and from the European Union, in order to outline a coherent and operational meaning for the interpretation of Art. 236 of the Criminal Code of the Republic of Moldova.

Keywords: monetary signs, leu, ban, banknotes, metallic coins, authorized authority.

NOȚIUNEA DE SEMNE BĂNEȘTI ÎN CONTEXTUL INFRACȚIUNILOR PREVĂZUTE LA ARTICOLUL 236 DIN CODUL PENAL

Abstract

Articolul urmărește să explice ce înseamnă semne bănești în sensul Art. 236 din Codul penal al Republicii Moldova și de ce această noțiune este atât de importantă pentru a percepe esența juridică a infracțiunilor de fabricare sau punere în circulație a semnelor bănești false sau a titlurilor de valoare false

În centrul atenției se află bancnotele și monedele metalice – inclusiv cele jubiliare sau comemorative – emise de Banca Națională a Moldovei ori de autoritățile monetare ale altor state ori ale unor uniuni statale. Investigația evidențiază că aceste entități nu pot fi reduse la simple entități materiale, întrucât funcția lor economică și juridică este aceea de a garanta stabilitatea și credibilitatea plăților.

Scopul principal al articolului este de a determina semantismul noțiunii de semne bănești prin analiza actelor normative relevante din Republica Moldova, din alte state și din cadrul Uniunii Europene, pentru a contura un înțeles coerent și aplicabil în interpretarea Art. 236 din Codul penal al Republicii Moldova.

Cuvinte-cheie: semne bănești, leu, ban, banknote, monede metalice, organ autorizat.

Introduction. As I noted in a recent publication, "in the case of the offenses provided under Article 236 of the Criminal Code of the Republic of Moldova (hereinafter – CC RM), the impairment of the legal interest of the offense is initially brought about through, among other things, authentic monetary signs [...] which relate to the material object of the social relations protected in Article 236 CC RM. By initiating the criminal activity, the perpetrator causes these entities to be transformed into false monetary signs which

relate to the material object of the offenses provided in Article 236 CC RM" [1]. Starting from this hypothesis, below we attempt to show why defining the content of the notion of monetary signs is not a mere terminological exercise but a condition for understanding what exactly criminal law protects and why the manufacture and putting into circulation of counterfeit monetary signs undermines public confidence in payment mechanisms. Such a clarification makes it possible to distinguish between the physical medium of monetary signs and their legal function, providing a practical reference for interpreting Article 236 CC RM and for avoiding inconsistent solutions in its application.

Methods and materials applied. The present investigation applies a normative analysis to interpret coherently and systematically the provisions of Article 236 CC RM together with the extra-penal norms that complement and give them content. At the same time, the comparative method is used by relating the norms of the Republic of Moldova's legislation to European regulations and to those of other states, in order to highlight relevant convergences and differences. In parallel, the historical method is employed to trace the evolution of specific categories of monetary signs in the territory of the Republic of Moldova and the way this evolution has influenced the legislator's terminological choices.

Discussions and results obtained. In the original version of Article 236 CC RM the term "money" (in the title) and the expression "banknotes of the National Bank of Moldova, coins, foreign currency" (in the operative part) were used. After the entry into force of Law No.33 of 06.03.2012 for the amendment and completion of certain legislative acts (hereinafter Law No.33/2012), in the title of Article 236 CC RM the term "money" was substituted with the expression "monetary signs"; in the operative part of that article the expression "banknotes of the National Bank of Moldova, coins, foreign currency" was replaced by the phrase "monetary signs (banknotes and metallic coins, including jubilee and commemorative ones, issued by the National Bank of Moldova or by the authorized body of a foreign state or of a monetary union of foreign states)".

The phrase "monetary signs" or similar expressions are frequently used in Romanian legislation: Law No.102 of 21.09.1992 on the national coat of arms and the state seal; Law No.312 of 28.06.2004 on the Statute of the National Bank of Romania; Regulation No.8 of the National Bank of Romania of 19.12.2002 on the procedure for detecting counterfeit or forged euro banknotes and coins, etc.

Besides this, the phrase "monetary signs" or related expressions are used in Romanian translations of foreign criminal laws that contain provisions corresponding to Article 236 of the CC RM: "monetary symbols (însemne băneşti)" [2] (Art. 243 of the Criminal Code of the Republic of Bulgaria); "monetary signs (semne băneşti)" [3] (Art. 310 of the Criminal Code of the Republic of Poland); "currency signs (semne monetare)" [4; 5] (Art. 442-1 of the Criminal Code of the French Republic; Art. 213 of the Criminal Code of the Grand Duchy of Luxembourg).

In accordance with paragraph (2) of the Article 130 of the Constitution, "the national currency of the Republic of Moldova is the Moldovan leu" [6]. In turn, paragraph (1) of Article 479 of the Civil Code provides that "the national currency, the leu, constitutes a legal means of payment, mandatory for acceptance at its nominal value throughout the territory of the Republic of Moldova" [7]. Last but not least, Article 3 of Law No.1232 of 15.12.1992 on money (hereinafter Law No.1232/1992) states that "the national currency – the leu – is the legal means of payment on the territory of the Republic of Moldova" [8].

The difference in wording between paragraph (2) of Article 130 of the Constitution, paragraph (1) of Article 479 of the Civil Code and Article 3 of Law No.1232/1992, on the one hand, and Article 236 CC RM, on the other, does not reveal an error but only the fact that Article 236 CC RM requires more specific terminology adapted to the particularities

of the incrimination; for this reason the legislator resorted to the phrase "monetary signs" capable of covering both banknotes and coins simultaneously without being conflated with either.

Below, we will analyse precisely these concrete categories. In the operative part of Article 236 CC RM they are mentioned in the formulation "banknotes and metallic coins, including jubilee and commemorative ones, issued by the National Bank of Moldova or by the authorized body of a foreign state or of a monetary union of foreign states".

The first segment that must be examined in this context concerns *the banknotes and metallic coins, including jubilee and commemorative ones, issued by the National Bank of Moldova (hereinafter* – NBM).

In this regard, Article 1 of Law No.1232/1992 provides: "The monetary unit of the Republic of Moldova is the leu (Moldovan), equal to 100 bani. Cash is in circulation in the form of paper monetary signs (banknotes) and metallic monetary signs (coins)" [8]. Similarly, although without directly using the expression "monetary signs", paragraph (1) of Article 56 of Law No.548 of 21.07.1995 on the National Bank of Moldova (hereinafter – Law No.548/1995) states: "The monetary unit of the Republic of Moldova is the Moldovan leu. One leu is divided into 100 bani" [9]. Viewed together, these provisions show that the wording in Article 236 CC RM – "monetary signs" – does not depart from the general legislative framework but particularizes it, providing a semantic fit appropriate to the needs of criminal law.

It should be noted that the current monetary signs were put into circulation by Decree No.200 of the President of the Republic of Moldova of 24.11.1993 on the introduction of the national currency in the Republic of Moldova. That normative act establishes, among other things: "As of 18:00 on 2 December 1993, the leu (Moldovan) shall be considered the sole legal means of payment on the territory of the Republic of Moldova" [10]. Therefore, the establishment of the Moldovan leu as the legal means of payment marks the definitive transition to the current monetary signs and consolidates the framework within which Article 236 CC RM protects these values expressed in their concrete categories: banknotes and metallic coins.

Metallic coins, one of these categories, include not only "metallic monetary signs (money regarded as subsidiary coin), put into circulation by the NBM" [11; 12]. As evidence of this, we present two examples of normative acts by which metallic coins were put into circulation: NBM Decision No.1 of 12.01.1998 on the putting into circulation of the metallic coin with the nominal value of 50 bani, model of 1997; NBM Decision No.5 of 22.02.2018 on the putting into circulation as a means of payment of new metallic coins. In accordance with the latter of these normative acts, "as of 28 February 2018, four new metallic coins with the nominal values of 1 leu, 2 lei, 5 lei and 10 lei were put into circulation as a means of payment on the territory of the Republic of Moldova" [13].

Banknotes constitute the other category of monetary signs specified in Article 236 CC RM. The reference is to "paper monetary signs (Moldovan lei) put into circulation by the NBM" [11; 12].

The NBM issues banknotes in denominations from 1 leu to 1000 lei. For most denominations there are multiple issues (1993-2015), reflecting both design evolution and the continuous modernization of anti-counterfeiting security features.

Among the examples of normative acts by which banknotes were put into circulation we highlight: NBM Decision No.319 of 25.11.1999 on the putting into circulation of the banknote with the nominal value of 500 lei; NBM Decision No.249 of 13.10.2003 on the putting into circulation of the banknote with the nominal value of 1000 lei; NBM Decision No.2 of 24.09.2015 on the putting into circulation as a means of payment of certain mod-

ernized banknotes; etc.

A distinct category of monetary signs, specified in Article 236 CC RM, consists of *jubilee or commemorative monetary signs (metallic coins or banknotes)*.

The NBM has issued commemorative coins since 1996, most of them made of precious metals (gold and silver), in limited mintages, dedicated to personalities, historical events, cultural heritage, science, nature and other national themes. These coins are grouped into numerous thematic series (Personalities; Historical Events; Monasteries; Red Book; Monuments; Science and Innovation; etc.).

The first jubilee coin is referenced in Parliamentary Decision No.1012 of 23.10.1996 on the putting into circulation of the jubilee coin dedicated to the 5th anniversary of the proclamation of the independence of the Republic of Moldova. The first commemorative coins are referenced in NBM Decision No.342 of 14.11.2000 on the putting into circulation as a means of payment and for numismatic purposes of certain commemorative coins.

The NBM has issued a single commemorative banknote. This banknote is referred to in NBM Decision No.223 of 21.11.2013 on the putting into circulation as a means of payment and for numismatic purposes of certain commemorative coins and a commemorative banknote. In point V of that normative act we find the following wording: "Commemorative coins and commemorative banknotes are accepted as a means of payment at their nominal value" [14]. In fact, provisions of this kind can be identified in all normative acts by which jubilee or commemorative monetary signs were put into circulation. Such provisions constitute the legal basis for considering these monetary signs as the material object or product of the offenses provided for in Article 236 CC RM.

In another respect, for banknotes and metallic coins (including jubilee and commemorative ones) to be able to represent the material object or product of the offenses provided for in Article 236 CC RM, it is necessary that they *be issued by the NBM*. This condition is expressly established in Article 236 CC RM.

Per a contrario, objects issued on the territory of the Republic of Moldova by anyone else cannot constitute the material object or product of the offenses provided for in Article 236 CC RM. This refers in particular to the so-called "rubles of the moldovan nistrian republic" and the so-called "kopecks of the moldovan nistrian republic". These are issued by the so-called "transnistrian republican bank". This is an unconstitutional entity which, for the purposes of Article 134^{23} CC RM, constitutes "an alleged authority created on the territory of a state, outside that state's constitutional regulations and not recognized in accordance with the provisions of international treaties" [15]. Under these circumstances, it is clear that such objects cannot benefit from the criminal-law protection reserved for the monetary signs of the Republic of Moldova, and their inclusion within the scope of Article 236 CC RM is excluded by their very unconstitutional nature. The alleged monetary signs issued on the territory of the Republic of Moldova by an unconstitutional entity, if counterfeited, should be treated as instruments for committing fraud or for causing material damage by deception or abuse of trust.

We examined the first segment of the description in Article 236 CC RM of the material object or product of the offense – the banknotes and metallic coins, including jubilee and commemorative ones, issued by the NBM. The second such segment concerns *the banknotes and metallic coins, including jubilee and commemorative ones, issued by the authorized body of a foreign state or of a monetary union of foreign states.*

There are no modern states that have two distinct national monetary signs of their own, issued in parallel by their authorized body. There are, however, states with two monetary signs, one of which is foreign (for example: Panama, Zimbabwe), or states that use foreign monetary signs (for example: Montenegro). Such monetary signs can, of course,

constitute the material object or product of the offenses provided for in Article 236 CC RM.

It should be noted that this article applies regardless of whether the issuing state of the monetary signs manufactured or put into circulation has signed, ratified, or acceded to the Geneva Convention.

When we speak of monetary unions of foreign states, we primarily mean monetary unions with a common monetary policy (that is, with common monetary signs and a common central bank). Thus, in the Euro area, the European Central Bank issues the euro. Council Regulation (EC) No.974/98 of 3 May 1998 on the introduction of the euro provides in Article 2: "As from 1 January 1999 the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent" [16]. In the East Caribbean Currency Union, the East Caribbean dollar is issued by the Eastern Caribbean Central Bank. In the West African Monetary Union, the Central Bank of West African States issues the West African franc. In the Central African Monetary Union, the Central Bank of the Economic and Monetary Community of Central Africa issues the Central African franc. In the Pacific Monetary Union, the Issuing Institution for Overseas Territories issues the CFP franc of the French Pacific Communities.

Foreign monetary signs are issued either by the authorized body of the monetary union of foreign states or by the authorized body of a foreign state. The important point is that, in both cases, the issuing body is an authorized one. The following do not meet this condition: the so-called "north cypriot lira" issued by the so-called "central bank of the turkish republic of northern cyprus"; the so-called "somaliland shilling" issued by the so-called "bank of somaliland"; the so-called "abkhazia apsar" issued by the so-called "national bank of abkhazia"; the so-called "south ossetian rouble" issued by the so-called "national bank of south ossetia" etc. These alleged issuing authorities are nothing other than unconstitutional entities within the meaning of Article 134^{23} CC RM. The alleged monetary signs issued in the territory of other states by such entities, if counterfeited, can be used as instruments for committing fraud or for causing material damage by deception or abuse of trust.

It is possible that jubilee or commemorative coins or banknotes may be issued by the authorized body of a foreign state. As an example in this regard we present Circular No.42 of the National Bank of Romania of 15.09.2023 concerning the release into the numismatic circuit of the mint set on the theme "175 years since the adoption of the tricolor". The following passage from Article 1 of that normative act deserves attention: "The mint set will contain the Romanian coins in circulation, with the nominal values of: 1 ban, 5 bani, 10 bani, 50 bani [...]" [17]. In other words, the metallic coins specified in this circular have a vocation not only as numismatic objects but also as monetary signs, as means of payment.

It is also possible that some monetary unions of foreign states may issue jubilee or commemorative coins, either through a common authorized body or through coordinated issues at the union level.

Having examined all the hypotheses that fall within the scope of the phrase "monetary signs (banknotes and metallic coins, including jubilee and commemorative ones, issued by the National Bank of Moldova or by the authorized body of a foreign state or of a monetary union of foreign states)" as used in Article 236 CC RM, it is necessary to analyse the counter-hypotheses that do not fall within the scope of that phrase.

The first of these counter-hypotheses is *virtual currency*.

In accordance with paragraph (5) of Article 132^{3} of the CC RM, "virtual currency means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily linked to a legally established currency and does

not have the legal status of money or currency, but is accepted by natural or legal persons as a means of exchange and can be transferred, stored and traded electronically" [15]. The phrase "digital representation" in this definition clearly demonstrates the incorporeal, immaterial nature of virtual currencies. It should be noted, however, that the offenses provided in Article 236 CC RM have a material object, not an immaterial one. This is the first indication confirming that virtual currencies cannot constitute the material object or product of the offenses provided for in Article 236 CC RM. Other indications can also be identified in paragraph (5) of Article 132^3 CC RM: "is not issued or guaranteed by a central bank or a public authority" [15]; "does not have the legal status of currency or money" [15].

All of the above are sufficient to state that virtual currencies do not constitute the material object or product of the offenses provided in Article 236 CC RM.

Virtual currencies, if created fraudulently, may be used as means for committing fraud or for causing material damage by deception or abuse of trust.

Another counter-hypothesis is *electronic money*.

In accordance with paragraph (4) of Article 132^3 of the CC RM, "electronic money means a monetary value stored electronically, including magnetically, representing a claim on the issuer, which is issued upon receipt of funds (other than electronic money) for the purpose of carrying out payment transactions, and which is accepted by a person other than the issuer of the electronic money" [15]. It follows that electronic money is a specialized form of cashless monetary means.

In the logic of the foregoing, it is necessary to reiterate: "Article 236 CC RM concerns exclusively the circulation of monetary signs in cash [...]. The circulation of cashless monetary signs constitutes the process of movement of monetary signs that have no material expression, in the form of an entry in a bank account, a process in which, during a settlement transaction, a certain sum of money is debited from one subject's bank account and credited to another subject's bank account" [18].

Along the same lines, it should be noted that Article 169a of the Penal Code of the Kingdom of Denmark establishes liability for "a person who, without right, produces, acquires or distributes false electronic money with the intent that it be used as genuine" [19]. The criminal law of the Republic of Moldova does not expressly incriminate such an act. False electronic money produced to be used as genuine may serve as an instrument for committing fraud or for causing material damage by deception or abuse of trust.

Another counter-hypothesis is *the cashless payment instrument*.

According to paragraph (2) of Article 132^3 of the CC RM, "by cashless payment instrument is meant a device, an object or a record, which is protected, immaterial or material or a combination of these, other than legal tender, and which, alone or together with a procedure or set of procedures, enables the holder or user to transfer money or monetary value, including by means of electronic money or virtual currency" [15]. The phrase "other than legal tender" in this definition clearly demonstrates that cashless payment instruments do not constitute the material object or product of the offenses provided for in Article 236 CC RM. A cashless payment instrument that is falsified may constitute the means of committing the offense provided, for example, in paragraph (1) of Article 260^8 CC RM.

The last counter-hypothesis is that of *medals*, *tokens*, *fiches*, *etc*.

Thus, let. (c) of Article 1 of Council Regulation (EC) No.2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins contains the following definition: "medals and tokens' means those metallic objects, other than blanks intended for striking coins, which have the appearance and/or technical properties of a coin but are not issued under national or participating third country legislative provisions or other foreign legislative provisions, and which therefore are neither a legal means of payment

nor legal tender" [20]. The final part of this definition clearly denotes that medals and tokens, as understood by the cited normative act, do not constitute the material object or product of the offences provided for in Article 236 CC RM.

§ 334[2] of the Criminal Code of the Republic of Estonia provides liability for "the manufacture of medals or tokens having visual characteristics, dimensions and metallic properties similar to those of the euro coin, as described in Council Regulation (EC) No.2182/2004 on medals and tokens similar to euro coins [...] for commercial purposes or the sale, import or distribution of such medals or tokens" [21]. Article 215A of the Criminal Code of Greece establishes liability for a similar offence. The criminal law of the Republic of Moldova does not expressly incriminate such acts. False medals or tokens similar to euro coins may serve as instruments for committing fraud or for causing material damage by deception or abuse of trust. With regard to "the colour reproduction of banknotes and metallic coins issued by the National Bank of Moldova, with dimensions from 2/3 to 4/3, partial or complete, for advertising, informational or other commercial purposes" [22], it should be noted that such an act is qualified under Article 289[1] of the Code of Administrative Offences of the Republic of Moldova.

In the context of the same counter-hypothesis, Article 2 of Law No.291 of 16.12.2016 on the organization and conduct of gambling contains the following definition: "specific gaming means – equivalents of monetary means, bearing the right to participate in the game of chance and to receive winnings in the event of a favourable game outcome (tickets, including lottery tickets, official paper prints of information, coupons, tokens, impulses, blanks, fiches etc.), which may be expressed in material or electronic form" [23]. Such specific gaming means, if counterfeited, may serve as instruments for committing fraud or for causing material damage by deception or abuse of trust.

A similar statement can be made regarding telephone fiches, parking tokens, car-wash tokens, tokens for jukeboxes, promotional/display tokens, etc. These are not monetary signs within the meaning of Article 236 CC RM. Consequently, the manufacture or circulation of such falsified objects cannot be qualified under that article.

Conclusions. The terminology used in Article 236 CC RM referring to monetary signs as the material object or product of the offense, is the result of a legislative and historical evolution that required a distinction between banknotes and metallic coins. An analysis of the regulatory changes, monetary practices from the early years of independence and current regulations shows that the phrase "monetary signs" provides adequate coverage for all forms of cash in circulation. Comparing the Moldovan solutions with those of other states and with European practice confirms that this terminological choice fits within a broader trend toward conceptual clarification. The notion of monetary signs thus emerges as a terminological tool capable of ensuring the uniform and predictable application of Article 236 CC RM.

Bibliographical references

1. Roșca (Dichii) C. Poziționarea falsurilor puse în circulație în sistemul componențelor de infracțiuni prevăzute la art. 236 din Codul penal. În: Integrare prin cercetare și inovare: Ştiinţe juridice și economice, 6-7 noiembrie 2025, Chișinău. Chişinău: Centrul Editorial-Poligrafic al Universității de Stat din Moldova, 2025, p.17-22.
2. Codul penal al Republicii Bulgaria. Disponibil: https://codexpenal. just.ro/laws/Cod-Penal-Bulgaria-RO.html (Accesat 06.04.2026).
3. Codul penal al Republicii Polone. Disponibil: https://codexpenal.just.ro/laws/Cod-Penal-Polonia-RO.html (Accessed on 06.04.2026).
4. Codul penal al Republicii Franceze. Disponibil: https://codexpenal. just.ro/laws/

Cod-Penal-Franta-RO.html (Accesat 06.04.2026).
5. Codul penal al Marelui Ducat de Luxemburg. Disponibil: https://codexpenal.just.ro/laws/Cod-Penal-Luxemburg-RO.html (Accesat 06.04.2026).
6. Constituţia Republicii Moldova nr.1 din 29 iulie 1994. În: Monitorul Oficial al Republicii Moldova, 12.08.1994, nr.1 (5).
7. Codul civil al Republicii Moldova nr.1107 din 6 iunie 2002. În: Monitorul Oficial al Republicii Moldova, 22.06.2002, nr.82-86 (661).
8. Legea cu privire la bani nr.1232 din 15 decembrie 1992. În: Monitorul Oficial al Republicii Moldova, 01.03.1993, nr.3 (51).
9. Legea cu privire la Banca Naţională a Moldovei nr.548 din 21 iulie 1995. În: Monitorul Oficial al Republicii Moldova, 30.10.2015, nr.297-300 (544).
10. Decretul Președintelui Republicii Moldova cu privire la introducerea monedei naţionale în Republica Moldova nr.200 din 24 noiembrie 1993. În: Monitorul Oficial al Republicii Moldova, 30.11.1993, nr.11 (341).
11. Stati V. Infracţiunea de fabricare sau punere în circulaţie a banilor falşi sau a titlurilor de valoare false. Analiza de drept penal. În: Revista Naţională de Drept, 2009, nr.4(103), p.45-57.
12. Stati V. Infracţiunea de fabricare sau punere în circulaţie a banilor falşi sau a titlurilor de valoare false: analiză de drept penal. În: Studia Universitatis Moldaviae (Seria Ştiinţe Sociale), 2009, nr.3(23), p.133-146.
13. 1Hotărârea BNM cu privire la punerea în circulație ca mijloc de plată a monedelor metalice noi nr. 5 din 22 februarie 2018. În: Monitorul Oficial al Republicii Moldova, 28.02.2018, nr. 67 (323).
14. Hotărârea BNM cu privire la punerea în circulaţie ca mijloc de plată şi în scop numismatic a unor monede comemorative şi a unei bancnote comemorative nr.223 din 21 noiembrie 2013. În: Monitorul Oficial al Republicii Moldova, 29.11.2013, nr.276-280 (1755).
15. Codul penal al Republicii Moldova nr.985 din 18 aprilie 2002. În: Monitorul Oficial al Republicii Moldova, 13.09.2002, nr.128-129 (1012).
16. Council Regulation (EC) No.974/98 of 3 May 1998 on the introduction of the euro. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:01998R0974-20260101 (Accessed 06.04.2026).
17. Circulara BNR privind lansarea în circuitul numismatic a setului de monetărie cu tema 175 de ani de la adoptarea tricolorului nr. 42 din 15 septembrie 2023. În: Monitorul Oficial al României, 22.09.2023, nr.855.
18. Roșca (Dichii) C. Obiectul juridic special al infracțiunilor prevăzute la art. 236 din Codul penal al Republicii Moldova. În: Perspectivele și Problemele Integrării în Spațiul European al Cercetării și Educației, Vol. XI, 6 iunie 2024, Cahul. Cahul: Tipografia „Centro-Grafic" SRL, Cahul, 2024, Vol. 11, Partea I, p.87-91.
19. Codul penal al Regatului Danemarcei. Disponibil: https://codexpenal. just.ro/laws/Cod-Penal-Danemarca-RO.html (Accesat 06.04.2026).
20. Council Regulation (EC) No.2182/2004 of 6 December 2004 concerning medals and tokens similar to euro coins. Disponibil: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998R0974 (Accesat 06.04.2026).
21. Codul penal al Republicii Estonia. Disponibil: https://codexpenal.just.ro/laws/Cod-Penal-Estonia-RO.html (Accesat 06.04.2026).
22. Codul contravențional al Republicii Moldova nr.218 din 24 octombrie 2008. În: Monitorul Oficial al Republicii Moldova, 16.01.2009, nr.3-6 (15).
23. Legea cu privire la organizarea și desfășurarea jocurilor de noroc nr.291 din 16 decembrie 2016. În: Monitorul Oficial al Republicii Moldova, 06.01.2017, nr.2-8 (3).

CZU: 343.32(478) **DOI: https://doi.org/10.5281/zenodo.20825275**

THE OFFENCE OF TREASON AGAINST THE STATE (ARTICLE 337 OF THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA) IN LIGHT OF THE QUALITY STANDARDS OF CRIMINAL LAW ENSHRINED IN ARTICLE 7 OF THE ECHR

Radion COJOCARU,
PhD, University Professor,
Director, Doctoral School "Criminal Sciences and Public Law",
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3809-7392

Mihai CURTEANU,
PhD Student, Police Chief Commissioner,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0000-1775-793X

Abstract

This study examines the offence of treason against the state, regulated by Article 337 of the Criminal Code of the Republic of Moldova, from the perspective of the requirements regarding the quality of criminal law enshrined in Article 7 of the European Convention on Human Rights. The analysis is grounded in the principle of legality of offences and penalties (nullum crimen, nulla poena sine lege), highlighting the defining requirements of a criminal-law provision: accessibility, clarity, and foreseeability.

The scientific inquiry aims to assess the normative content of the incriminating provision, with particular emphasis on the manner in which the constituent elements of the offence of treason against the state are formulated, in order to determine the extent to which the norm enables its addressees to adjust their conduct accordingly and to exclude the risk of arbitrary application of criminal law.

By reference to the case-law of the European Court of Human Rights, the research assesses the conformity of the provisions of Article 337 of the Criminal Code with European standards concerning the foreseeability and certainty of criminal-law norms, while also highlighting the risks of an extensive interpretation that could undermine the principle of legal certainty and the guarantees of fundamental rights.

The study argues for the need for precise, clear, and foreseeable regulation of the offence of treason against the state, in full compliance with the requirements of Article 7 of the ECHR, with a view to ensuring a fair balance between the imperatives of protecting state security and respecting the fundamental rights and freedoms of the individual.

Keywords: criminal offence, treason against the state, accessibility, clarity, foreseeability.

INFRACȚIUNEA DE TRĂDARE DE PATRIE (ARTICOLUL 337 CODUL PENAL AL REPUBLICII MOLDOVA) ÎN LUMINA STANDARDELOR DE CALITATE ALE LEGII PENALE CONSACRATE DE ARTICOLUL 7 CTEDO

Abstract

Studiul examinează infracțiunea de trădare de patrie, reglementată de Art. 337 din Codul penal al Republicii Moldova, prin prisma exigențelor de calitate ale legii penale consacrate de Art. 7 din Convenția Europeană a Drepturilor Omului. Analiza este fundamentată pe principiul legalității incriminării și pedepsei („nullum crimen, nulla poena sine lege"), fiind evidențiate cerințele definitorii ale normei penale: accesibilitatea, claritatea și previzibilitatea.

Demersul științific vizează evaluarea conținutului normativ al dispoziției de incriminare, cu accent asupra modului de formulare a elementelor constitutive ale infracțiunii de trădare de patrie, în vederea determinării gradului în care norma oferă destinatarilor săi posibilitatea de a-și conforma conduita și de a exclude riscul aplicării arbitrare a legii penale.

Prin raportare la jurisprudența Curții Europene a Drepturilor Omului, cercetarea apreciază conformitatea prevederilor Art. 337 C.pen. cu standardele europene privind previzibilitatea și certitudinea normei penale, fiind totodată evidențiate riscurile unei interpretări extensive ce ar putea aduce atingere principiului securității juridice și garanțiilor drepturilor fundamentale.

Se argumentează necesitatea unei reglementări precise, clare și previzibile a incriminării trădării de patrie, în deplină concordanță cu exigențele Art. 7 CtEDO, în vederea asigurării unui just echilibru între imperativele protecției securității statului și respectarea drepturilor și libertăților fundamentale ale persoanei.

Cuvinte-cheie: infracțiune, trădare de patrie, accesibilitate, claritate, previzibilitate.

Introduction. The legal regime governing treason against the state lies at the intersection of two inseparable requirements. On the one hand, the State has the right and the obligation to defend its sovereignty, independence, unity, indivisibility, security, and defence capacity. On the other hand, precisely in the field of offences against state security, the requirement of clarity of criminal law calls for a well-delimited formulation of the incrimination, since the margin of discretion left to law-enforcement authorities is, naturally, broader than in the case of many ordinary offences. These values are enshrined at the constitutional level and are incorporated into the criminal-law provision on treason against the state [1; 2, Art. 1; 4, Art. 337]; however, their protection does not relieve the legislature of the obligation to describe the prohibited conduct in strict accordance with the requirements of the principle of legality of incrimination.

The text of Article 337 of the Criminal Code of the Republic of Moldova was amended by Law No.136 of 6 June 2024, under which treason against the state is defined as "an act committed intentionally by a citizen of the Republic of Moldova against the sovereignty, independence, unity, indivisibility, security, or defence capacity of the Republic of Moldova, in the interest of a foreign state, a foreign organisation, an unconstitutional entity, or their representatives, expressed through: a) going over to the enemy in time of war or armed conflict; b) espionage; c) disclosure of state secrets; d) providing assistance for the purpose of carrying out hostile activities against state security" [1].

From the perspective of the present study, the central issue concerns the extent to which the legislative text satisfies the standards of accessibility and foreseeability developed in the case-law of the European Court of Human Rights.

Discussions and results obtaone. I. The Evolution of the Law and the 2024 Legislative Intervention. In the previous wording, Article 337 of the Criminal Code described treason against the state as an act committed intentionally by a citizen of the Republic of Moldova to the detriment of the sovereignty, territorial inviolability, or state security and defence capacity of the Republic of Moldova, by going over to the enemy, espionage, disclosure of state secrets, or aiding a foreign state in carrying out hostile activity against the Republic of Moldova [4, Art. 337].

Law No.136/2024 introduced several major legislative amendments concerning the scope of incrimination of the offence of treason against the state [1]. One of the legislature's primary concerns was to create a legislative model of incrimination capable of allowing a clearer and more effective individualisation of criminal liability for the act of treason against the state. Such individualisation is strictly calibrated according to the seriousness of the various forms of treason established by the legislature within the criminal-law framework.

Accordingly, the incriminating provision in Article 337 of the Criminal Code was structured into four paragraphs: paragraph (1) provides for the basic composition or standard form of the offence; paragraph (2) concerns the commission of treason against the state for material gain or by a public person, a person holding a position of responsibility, or a person holding a position of public dignity; paragraph (3) refers to the act that caused the death of a person; and paragraph (4) regulates the special form of exemption from criminal liability [1].

Another legislative amendment concerns the reformulation of the phrase "sovereignty, territorial inviolability or state security and defence capacity" as "sovereignty, independence, unity, indivisibility, security or defence capacity", thereby bringing the criminal-law text more closely into line with the social values provided for in Article 1 of the Constitution [1; 2, Art. 1]. Through this legislative amendment, the sphere of social relations subject to criminal-law protection through the incrimination of treason against the state was substantially expanded. Thus, whereas the previous incriminating text listed four social values subject to criminal-law protection, the current list has been extended to six social values, through the inclusion of the "unity" and "indivisibility" of the State [1]. Such clarification is justified in the context of the geopolitical vulnerability of the Republic of Moldova, especially with reference to the experience of the separation of the Transnistrian region.

The third legislative amendment concerns the clarification of "going over to the enemy" as a normative manner of committing the offence. Thus, the wording "going over to the enemy" became "going over to the enemy in time of war or armed conflict" [1]. Through this intervention, the legislature specified the temporal element of the act, with the aim of distinguishing this manner of commission from other hostile acts that may be carried out to the detriment of the security of the Republic of Moldova. Therefore, the act of going over to the enemy may be committed either in time of war or during an armed conflict [1; 4, Art. 337].

In fact, even before the entry into force of Law No.136/2024, the act of going over to the enemy was treated as a criminal activity that could be carried out only in time of war: "Going over to the enemy means both the movement of a citizen of the Republic of Moldova to the enemy camp, on its territory, within the disposition of enemy troops, and the commission of other acts capable of favouring the enemy's activity or weakening the combat strength of our army or of allied armies, acts committed on the territory of our country in time of war" [3, p. 525]. We consider, however, that such clarification by the legislature is welcome, since not every military conflict reaches the scale of a war within the meaning of Article 127 of the Criminal Code, which defines wartime as "the interval from the date of declaration of mobilisation or the commencement of war operations until the date on which the army is placed on a peacetime footing" [4, Art. 127].

Another legislative amendment consists in the reformulation of the act of "aiding a foreign state in carrying out hostile activity against the Republic of Moldova" as "aiding for the purpose of carrying out hostile activities against state security" [1]. The rationale for this clarification is explained, on the one hand, by the legislature's concern to distinguish this normative manner from going over to the enemy, by removing the word "hostile" in its former form associated with the enemy, and, on the other hand, by the intention to expand the scope of incrimination of the offence of treason against the state to the new emerging threats affecting state security. In the current geopolitical context, shaped by hybrid warfare, separatism, the dangers of their expansion, the massive manipulation of electoral processes through the external corruption of voters, and the energy vulnerabil-

ity of the Republic of Moldova, such clarification of the normative text may be explained by the need to adapt criminal law to constantly evolving security threats [5].

II. The Standard of Quality of Criminal Law in the Case-Law of the Strasbourg Court. Following its accession to the ECHR, the Republic of Moldova assumed the obligation to guarantee the respect and protection of fundamental rights and freedoms to all persons within its jurisdiction [7, Art. 1]. According to the principle of subsidiarity, the primary responsibility for ensuring fundamental rights and freedoms lies with the State. This principle means that, before applying to the Convention bodies, any applicant must have submitted his or her complaint to the competent national authorities capable of providing an effective and adequate remedy in the circumstances of the case [7, Art. 35]. At the same time, this principle reflects not only the existence of effective remedies, but also the primary obligation of all authorities, especially the courts, to prevent violations by directly applying the European Convention in their own judgments.

Article 7 § 1 of the Convention enshrines not only the prohibition of the retroactive application of a more severe criminal law, but also the prohibition of the extensive application of criminal law to the detriment of the accused [7, Art. 7; 8, para. 2]. In *Kokkinakis v. Greece*, the Court held that the law must clearly define offences and penalties [9, § 52]. In The Sunday Times v. the United Kingdom, the Court formulated the requirements of accessibility and foreseeability, stating that a norm is "law" only if it is formulated with sufficient precision to enable a person to regulate his or her conduct [10, § 49].

In *Cantoni v. France*, the Court clarified that the requirement of foreseeability is not excluded merely because the addressee of the norm must seek appropriate legal advice in order to assess the consequences of his or her conduct, especially where persons engaged in professional activities are concerned. However, this possibility does not exempt the legislature from the obligation to formulate the criminal-law norm in a sufficiently accessible and foreseeable manner [11, § 35].

Furthermore, in *Kafkaris v. Cyprus*, the Court emphasised that Article 7 concerns punishment as well, not only the definition of the offence [12, §§ 137-142]. In *Del Río Prada v. Spain and Kononov v. Latvia*, emphasis was placed on the foreseeability of judicial interpretation and on the limits of the jurisprudential development of criminal law [13, §§ 91-93, 111-117; 14, § 185]. In *G.I.E.M. S.R.L. and Others v. Italy*, the Court held that there must be a sufficient intellectual link between the perpetrator's conduct and the criminal liability incurred [15, §§ 241-242, 246].

In *Sud Fondi S.R.L. and Others v. Italy*, and subsequently in *Pessino v. France*, the Court stated that the interpretative function of the courts cannot compensate for the lack of determinacy of the legal text [16, §§ 105-117; 17, §§ 35-36]. In a related context, the judgment in *Rotaru v. Romania* affirmed that legal norms must indicate with sufficient clarity the scope of the authorities' discretion and the manner of its exercise, in order to prevent arbitrariness [18, §§ 55, 61].

III. Hostile Activities against State Security and the Problem of Criminal Legality. The core of the criticism lies in the phrase "hostile activities against state security". The Criminal Code does not contain a definition of this notion [4]. Nor does Law No.249/2025 on the National Security of the Republic of Moldova define the term "hostile" separately, although it regulates notions such as "threat", "risk", "danger", "vulnerability", and "national security" [6, Art. 3]. This gives rise to the first difficulty: the legislature has transferred to judicial practice the task of giving content to a formula with a very broad semantic scope.

In recent literature, the conduct of "providing assistance for the purpose of carrying out hostile activities against state security" is explained by reference to acts such as

recruiting citizens in the interest of a foreign intelligence service, supporting the activity of foreign spies, or carrying out other actions directed against the sovereignty, independence, unity, indivisibility, security, or defence capacity of the Republic of Moldova [5].

From an explanatory point of view, the doctrinal approach is useful. From the perspective of Article 7 of the Convention, however, doctrinal clarification cannot take the place of a legal definition. There is also the view that the former Article 337 no longer responded to new manifestations affecting national security, but this solution also signals the risk that the new regulation may shift the problem from the insufficiency of the old wording to the elasticity of the new one [5].

It is not irrelevant that, in August 2025, the Constitutional Court declared inadmissible an objection of unconstitutionality concerning the former phrase "providing assistance to a foreign state in carrying out hostile activity against the Republic of Moldova" [19]. Among the arguments relied on by the Court was the following reasoning: "The Court notes that, although the legislature used broader wording in the phrase 'aiding a foreign state in carrying out hostile activity against the Republic of Moldova' in the context of the offence of treason against the state, other wording in the challenged provision clarifies its scope of application. For example, by using the phrase 'aiding a foreign state,' the legislature specifies the condition of collaboration between the citizen of the Republic of Moldova and a foreign state. Likewise, by using the phrases 'to the detriment of the sovereignty, territorial inviolability or state security and defence capacity of the Republic of Moldova', as well as 'against the Republic of Moldova', the legislature specifies the purpose of the assistance in question and the values against which the criminal actions are directed, namely the special legal object. At the same time, the legislature sanctions only the act committed intentionally" [19, § 27].

The Court also held: "Having regard to the variety of situations that may arise in practice, the Court considers that it is neither possible nor reasonable for the legislature to provide in the Criminal Code an exhaustive list of the ways in which assistance may be provided to a foreign state and, respectively, of the hostile activities carried out against the Republic of Moldova, which may occur in the context and essence of the offence of treason against the state. Moreover, such a list could omit the regulation of situations that would reasonably justify criminal liability under Article 337 of the Criminal Code" [19, § 29].

The finding of inadmissibility does not, however, amount to a substantive validation of the quality of the text. On the contrary, the mere fact that the former wording generated constitutional litigation confirms the persistence of an area of normative uncertainty. Since the new text neither provides a list of the acts concerned nor lays down a legal criterion for delimitation, the reservations have not disappeared.

Conclusions. Any assessment of the clarity of the text must also take into account the place of Article 337 of the Criminal Code within the overall framework of offences against state security. Indeed, the more Article 337 of the Criminal Code uses terms with a high degree of generality, the more difficult it becomes to distinguish treason against the state from other offences against state security.

With regard to the modality consisting in "providing assistance for the purpose of carrying out hostile activities against state security", the law does not expressly specify which hostile activities are envisaged, only doctrinal examples being indicated, such as recruitment for a foreign intelligence service, facilitating the activity of foreign spies, or committing acts likely to seriously affect the security of the Republic of Moldova [5].

From the perspective of Article 7 of the Convention, such a margin of interpreta-

tion must be treated with caution, since a criminal-law norm must enable its addressee to foresee, to a reasonable degree, whether a certain conduct falls within the scope of criminal incrimination [7, Art. 7; 8, para. 2]. Amnesty International's reaction following the adoption of Law No.136/2024 moved precisely in this direction, pointing to the risk that the expanded definition of treason against the state could be used abusively against critical voices [20]. Even though such a position belongs to a non-governmental actor, not to a judicial body, the warning remains valid.

The criticism concerning the lack of clarity of Article 337 of the Criminal Code also has a broader Convention dimension, since an incrimination formulated in open-ended terms may produce collateral effects on freedom of expression. The Court held in Rotaru v. Romania that the law must provide adequate protection against arbitrariness [18, §§ 55, 61]. In criminal matters, this requirement becomes all the more important where the norm may affect conduct situated in the proximity of the exercise of fundamental freedoms.

At the European level, a criminal-law norm formulated in vague terms may raise issues both from the perspective of Article 7 of the Convention, with regard to the foreseeability of incrimination, and, in a related manner, from the perspective of Article 10, where it risks producing a chilling effect on the exercise of freedom of expression [7, Arts. 7 and 10].

Within this framework, phrases such as "hostile activities", if not delimited by clear criteria from lawful conduct, may create an area of uncertainty incompatible with the requirement of quality of criminal law.

Bibliographical references

1. Law No.136 of 06.06.2024 amending certain normative acts (amending the Criminal Code and the Contravention Code). In: Official Gazette of the Republic of Moldova, 07.06.2024, No.245-246, Art. 353. Available: https://monitorul.gov.md/ro/monitorul/view/pdf/2912/part/1#page=19.
2. Constitution of the Republic of Moldova, adopted on 29.07.1994. In: Official Gazette of the Republic of Moldova, 12.08.1994, No.1.
3. Borodac A. Criminal Law Handbook. Special Part (for university education). Chișinău: Central Printing House, n.d.
4. Criminal Code of the Republic of Moldova No.985-XV of 18.04.2002. In: Official Gazette of the Republic of Moldova, 13.09.2002, No.128-129.
5. Cojocaru R. The offence of treason against the state in the criminal legislation of the Republic of Moldova – vulnerabilities, challenges and solutions. In: Scientific Annals of the "Ștefan cel Mare" Academy of the Ministry of Internal Affairs of the Republic of Moldova, 2024, No.20, pp. 29-42.
6. Law No.249 of 10.07.2025 on the National Security of the Republic of Moldova. In: Official Gazette of the Republic of Moldova, 04.09.2025, No.463-466, Art. 627.
7. Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.
8. European Court of Human Rights. Guide on Article 7 of the European Convention on Human Rights. No punishment without law. Strasbourg: Council of Europe/European Court of Human Rights, updated on 28 February 2026. Available: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_7_eng.
9. Kokkinakis v. Greece, application No.14307/88, ECtHR judgment of 25 May 1993.
10. The Sunday Times v. the United Kingdom, Application No.6538/74, ECtHR judgment of 26 April 1979.

11. Cantoni v. France, application No.17862/91, ECtHR judgment of 15 November 1996.
12. Kafkaris v. Cyprus [GC], application No.21906/04, ECtHR judgment of 12 February 2008.
13. Del Río Prada v. Spain [GC], application No.42750/09, ECtHR judgment of 21 October 2013.
14. Kononov v. Latvia [GC], application No.36376/04, ECtHR judgment of 17 May 2010.
15. G.I.E.M. S.r.l. and Others v. Italy [GC], Applications Nos. 1828/06, 34163/07 and 19029/11, ECtHR judgment of 28 June 2018.
16. Sud Fondi S.r.l. and Others v. Italy, application No.75909/01, ECtHR judgment of 20 January 2009.
17. Pessino v. France, application No.40403/02, ECtHR judgment of 10 October 2006.
18. Rotaru v. Romania [GC], application No.28341/95, ECtHR judgment of 4 May 2000.
19. Decision of the Constitutional Court of the Republic of Moldova No.108 of 12.08.2025 declaring inadmissible Referral No.52g/2025 concerning the objection of unconstitutionality of certain provisions of Article 337 para. (1) of the Criminal Code, in the wording prior to Law No.9 of 2 February 2023.
20. Amnesty International. Moldova: New definition of treason against the state passed by parliament threatens freedom of expression. 31 May 2024. Available: https://www.amnesty.org/en/latest/news/2024/05/moldova-new-definition-of-high-treason-passed-by-parliament-threatens-freedom-of-expression/.

CZU 343.132 **DOI: https://doi.org/10.5281/zenodo.20825598**

SPECIAL INVESTIGATIONS IN THE COMMON LAW SYSTEM[1]

Boris GLAVAN,
PhD Habilitated, Associate professor,
Scientific Secretary of the Senate,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3838-4308

Alexandru CICALA,
PhD, Associate professor,
Head of the Department "Special Investigative and Anti-Corruption Activities",
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0001-5900-0679

Abstract

The regulation of special investigative techniques differs significantly between continental legal systems and those of the common law type. In continental states, these measures are regulated through detailed codifications and are based on the principle of written legality. By contrast, in the United States and the United Kingdom, the rules governing special investigations have developed primarily through case law, institutional practices of law enforcement agencies, and legislative acts adopted on an ad hoc basis in response to security challenges or judicial oversight.

An important philosophical difference can be observed in the use of undercover operations. In the American system, these methods are often considered the primary investigative option, with prosecutors encouraged to use them before conventional methods of evidence gathering. In European states, such as Germany, the approach is the opposite, with undercover investigations designed as measures of last resort.

With regard to interceptions and technical surveillance, the American system emphasizes compliance with constitutional standards and the requirement of "necessity," which entails demonstrating that traditional methods are ineffective, dangerous, or unlikely to yield results. The American regulatory framework thus remains a fragmented one, composed of legislative acts, judicial decisions, and administrative regulations.

Keywords: information, special investigative activity, special investigative techniques, common law system, undercover investigations, special investigative measures, etc.

INVESTIGAȚIILE SPECIALE ÎN SISTEMUL DE COMMON LAW

Abstract

Reglementarea tehnicilor speciale de investigație diferă semnificativ între sistemele de drept continental și cele de tip common law. În statele continentale, aceste măsuri sunt reglementate prin codificări detaliate și se bazează pe principiul legalității scrise. În schimb, în Statele Unite și Regatul Unit, normele privind investigațiile speciale s-au dezvoltat în principal prin jurisprudență, practici instituționale ale agențiilor de aplicare a legii și acte legislative adoptate punctual ca răspuns la provocări de securitate sau la intervenția controlului judecătoresc.

[1] The paper was developed within the research project "Modern Special Measures and Means for the Prevention and Combating of Crime: Realities and Development Perspectives in the Context of European Integration" (code 25.80012.0807.49SE), funded by the state budget.

O diferență importantă de filozofie se observă în utilizarea operațiunilor sub acoperire. În sistemul american, aceste metode sunt adesea considerate prima opțiune investigativă, procurorii fiind încurajați să le utilizeze înaintea metodelor convenționale de administrare a probelor. În statele europene, precum Germania, abordarea este opusă, investigațiile sub acoperire fiind concepute ca măsuri de ultimă instanță.

În privința interceptărilor și a supravegherii tehnice, sistemul american pune accent pe respectarea standardelor constituționale și pe condiția de „necesitate", care impune demonstrarea faptului că metodele tradiționale sunt ineficiente, periculoase sau puțin probabile să producă rezultate. Cadrul normativ american rămâne astfel unul fragmentar, format din acte legislative, hotărâri judecătorești și reglementări administrative.

Cuvinte-cheie: informație, activitate specială de investigație, tehnici speciale de investigații, sistem de common law, investigații sub acoperire, măsuri speciale de investigații, etc.

Introduction. Special investigative measures represent an essential tool in combating organized crime, terrorism, and other forms of serious criminality, enabling authorities to obtain information or evidence in situations where traditional investigative methods become ineffective or even impossible. These techniques – which include the interception of communications, covert surveillance, infiltration, the use of undercover agents, or access to electronic data – inherently involve a temporary restriction of certain fundamental rights (privacy, inviolability of the home, and secrecy of correspondence), which is why their legal regulation must ensure a delicate balance between the need for public security and the protection of the rule of law.

The legal systems of the United States of America and the United Kingdom of Great Britain provide two relevant comparative models for the analysis of special investigative measures. In the United States, detectives act simultaneously as undercover investigators and law enforcement officers, without a rigid procedural distinction between the pre-trial phase and the use of special investigative techniques. The police may initiate, either ex officio or upon a victim's complaint, actions such as seizure, interception, surveillance, or infiltration, independently deciding on their necessity, and subsequently transmit the case to the prosecutor or directly to the court. In the United Kingdom, the regulation of special investigative measures is based on a complex and layered legal architecture characteristic of the common law tradition, which combines case law, primary legislation (PACE 1984, RIPA 2000, IPA 2016, CHIS 2021), secondary legislation, and detailed codes of practice issued by the Home Office.

This paper aims to provide a comparative analysis of the regulation and application of special investigative measures in the law of the United States and the United Kingdom, with an emphasis on procedural aspects, authorization requirements, limits imposed by the protection of human rights, and mechanisms of judicial and parliamentary oversight. By comparing the two systems—one characterized by operational flexibility and an overlap between investigation and prosecution (the United States), the other by a multi-layered legal structure and enhanced procedural transparency (the United Kingdom)—the study seeks to identify optimal solutions that could inspire potential reforms in the legislation of the Republic of Moldova, taking into account the specific features of the civil law system and European commitments in the field of fundamental rights protection.

The study addresses, on the one hand, the institutional and procedural particularities of each system, and on the other hand, the way in which they manage the ongoing tension between the effectiveness of the fight against crime and compliance with the principles of the rule of law. Special attention is given to recent legislative developments, influenced by technological challenges (mass data collection, electronic surveillance) and by post-September 11, 2001 national security imperatives.

Through this comparative approach, the paper contributes to the scholarly debate

on the modernization of investigative tools in the context of the globalization of crime and the digitalization of society, emphasizing the need for a legal framework that is proportionate, predictable, and subject to democratic oversight.

Methods and materials applied. In the process of elaborating the study, doctrinal material, normative acts, activity reports, and scientific works regarding the conditions for carrying out special investigative measures were used. The investigation of this phenomenon was also made possible through the application of several scientific research methods of legal theory: the logical method, the method of comparative analysis, systemic analysis, statistical analysis, etc. At the same time, the works of local scholars, empirical information, as well as the opinions of employees within police structures were used.

Discussions and results obtained. While in continental states the regulations regarding special investigative techniques have developed around the principle of written legality and detailed codification, the experience of common law systems, such as the United States and the United Kingdom, follows a different trajectory. In these jurisdictions, the rules governing special investigations have not crystallized through unified codes, but through case law, practices developed by law enforcement agencies, and acts adopted on a case-by-case basis in response to security challenges or to the pressure of judicial oversight.

A fundamental difference in philosophy is highlighted by the American researcher Jacqueline Ross in a comparative study devoted to the United States and Germany. Thus, American prosecutors are trained to consider undercover methods, rather than conventional ones, as the first option in investigating certain offenses: “Before you subpoena documents; before you call witnesses before the grand jury; before you resort to conventional sources of evidence—make sure you have exhausted all undercover options. This must become your mantra” [35]. By contrast, in Germany, as in other European states, the fundamental rule is entirely the opposite: “Undercover investigation must always be considered a tactic of last resort” [35].

This difference in approach between the United States and Germany refers in particular to undercover operations. With regard to wiretapping and other forms of technical surveillance, the American philosophy is somewhat different, with emphasis placed on compliance with constitutional requirements and on fulfilling the condition of “necessity”. Federal law requires that an application for authorization of interception be accompanied by a full statement showing whether other investigative procedures have been tried and failed, or why they reasonably appear unlikely to succeed if tried, or would be too dangerous [29].

Thus, in the United States, constitutional standards regarding interceptions and surveillance derive primarily from the interpretation of the Fourth Amendment by the Supreme Court [33], while the requirement of “necessity” provided by Section 18 U.S.C. § 2518(1)(a) of the United States Code imposes that such measures be ordered only when traditional methods are ineffective, too dangerous, or unlikely to produce results. These constitutional guarantees have subsequently been detailed and strengthened through a series of major legislative acts.

Unlike the states of the ex-Soviet space, including the Republic of Moldova, the United States has never shown a tendency to adopt a single and exhaustive law regulating special investigative techniques. The American normative framework consists of a mosaic of legislative acts, executive orders, departmental instructions, and judicial decisions, reflecting both the complexity of the federal system and the specificity of the common law tradition [12].

The American legal system, based on the separation of powers and federalism, makes the regulation of special investigative techniques a multi-layered one. The main sources of law that authorize and limit the use of these techniques can be divided into four categories:

• *Legislative acts of Congress*, which constitute the legal foundation of any technique. Relevant examples include the Omnibus Crime Control and Safe Streets Act (1968), the Foreign Intelligence Surveillance Act (FISA, 1978), or the USA PATRIOT Act (2001), which establish the general framework, authorize certain techniques, and impose procedural and time limits.

• *Executive Orders of the President*, which establish tasks and competences for intelligence agencies (such as the NSA or CIA) and detail the manner of implementing federal laws.

• *Departmental guidelines issued by the Attorney General*, which provide precise rules for subordinate agencies (e.g., the FBI) regarding undercover operations or the use of informants.

• *Judicial decisions*, which play a vital role in defining constitutional limits. For example, in Katz v. United States (1967) [24], the Supreme Court established that electronic surveillance requires a judicial warrant, enshrining the principle of "reasonable expectation of privacy". In *Hoffa v. United States* (1966) [18], the Court decided that the use of informants and undercover agents does not constitute a "search" within the meaning of the Fourth Amendment, and in *Illinois v. Perkins* (1990) [19], it was held that an undercover agent interrogating a suspect in prison is not required to read Miranda rights, since there is not the same coercive pressure as in an official interrogation [33].

Although judicial precedent carries essential weight, the law adopted by Congress occupies a leading place in the system of sources of law. The system of legislative acts is complex and dynamic, the acts complementing and substituting each other. Among the most important regulations are:

• Omnibus Crime Control and Safe Streets Act (1968) [26];
• Foreign Intelligence Surveillance Act (FISA, 1978) [38];
• Communications Assistance for Law Enforcement Act (CALEA, 1994) [5];
• USA PATRIOT Act (2001) [43].

This framework is complemented by guidelines of the Attorney General, such as:

• FBI Undercover Operations Guidelines (1980) [36];
• Guidelines for the investigation of ordinary crimes, organized crime, terrorism, and domestic security (1983) [3];
• Guidelines regarding methods of obtaining documentary materials held by third parties [17].

It should be noted that the regime of telephone interceptions is regulated in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, also known as the Federal Wiretap Act [37]. This title establishes the general framework for the interception of wire, oral, or electronic communications, including the authorization procedure. The law provides that, in emergency situations involving serious threats to national security, interception may begin without a judicial warrant, with the approval of the U.S. Attorney General or a lawyer delegated by him, provided that within 48 hours an application for authorization is submitted to the court. If authorization is not obtained within this period, the interception must be immediately terminated (§2518(7) U.S.C.) [40].

The fight against crime in the United States is not only a federal matter, but also one involving state and local authorities. The main directions of activity of the police in the United States include regulation, enforcement, search, and investigation of criminal acts.

In this context, it is important to emphasize that the activity of special investigations is not institutionally separated from the criminal process: American criminal legislation is structured in such a way as to integrate the covert dimension of the investigation directly within criminal prosecution [1].

In police activity, special investigative measures occupy a central place, police officers acting simultaneously both as undercover investigators and as criminal investigation bodies (detectives). The American system does not distinguish, from a procedural point of view, between special investigative measures and criminal investigation actions, and the pre-trial phase often overlaps with the application of these techniques. The detective, either upon the complaint of the victim or on his own initiative, may carry out preliminary or in-depth investigative actions, including seizure, interceptions, surveillance, or infiltration [4]. He decides on the necessary measures, and after accumulating sufficient evidence may transmit the case to the prosecutor or even directly to the court. During the trial, the police testify as witnesses, which shows the direct connection between undercover investigation and judicial activity [42].

It should also be noted that in the United States the procedure for applying restrictive measures on constitutional rights depends on the purpose. On the one hand, there are measures intended for national security [38], intelligence and counterintelligence, including the prevention of international terrorism [26]; on the other hand, measures applied in the context of ordinary crime. Depending on the authority ordering the measures, they are divided into two categories:

• Those requiring judicial authorization (interception of communications, control of correspondence, restriction of the inviolability of the home) [26];

• Those that may be carried out without a judicial warrant when there is consent from one of the involved persons (external physical surveillance, infiltration, undercover operations, certain telephone interceptions, and electronic surveillance) [11].

In the United Kingdom, the fight against crime is carried out at distinct levels, reflecting the constitutional structure of the state. Thus, there are three separate criminal jurisdictions: England and Wales, Scotland, and Northern Ireland. This system of devolution allows each nation to have its own legal systems and law enforcement institutions, including the police, prosecution, and courts. Even in this context, certain agencies, such as the MI5, the Metropolitan Police Service, or the National Crime Agency, operate across the entire United Kingdom, particularly in cases of terrorism and serious organized crime [27].

The subjects and officials of operational subdivisions and other law enforcement bodies from all districts of Great Britain are independent in their activity from the central office of the Home Office, although, formally, they are included within its structure. The level of interaction and cooperation between these units is high, due to the objective requirement of coherence in special investigative activities in combating crime.

The British system for regulating special investigations is built on several legal levels, reflecting the common law tradition and the particular way in which the rule of law functions in the United Kingdom. These levels are:

1. Case law (common law) is the foundation of British law. The courts, especially the House of Lords (until 2009) and subsequently the Supreme Court of the United Kingdom, have created essential rules regarding the protection of private life and the limits of investigations. A classic example is Malone v. Commissioner of Police of the Metropolis [25], where the lack of a legal basis for secret interceptions was criticized, which led to the adoption of the first modern law in this field – the Interception of Communications Act 1985 (repealed in 2000).

2. Primary legislation (statute law) is the central source of investigative powers, adopted directly by the British Parliament:

✓ The Police and Criminal Evidence Act 1984 (PACE) [28] is a form of criminal procedure code for England and Wales, although it is not a code in the full sense of civil law systems, such as that of the Republic of Moldova. This law, together with the codes of practice subordinate to it, standardized and modernized police procedures of investigation, arrest, search, and interrogation.

✓ The Regulation of Investigatory Powers Act 2000 (RIPA) [30] regulates interceptions, covert surveillance, and the use of undercover agents.

✓ The Investigatory Powers Act 2016 (IPA) [21]—also known as the "Snooper's Charter"—consolidated and expanded previous regulations, establishing detailed procedures of authorization and control, including for the bulk collection of data.

✓ The Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (CHIS Act) [7] expressly introduced criminal immunity for covert human intelligence sources (including informants and agents), providing a controversial legal framework for authorizing "criminal conduct" necessary to maintain cover identities.

3. Secondary legislation (delegated/secondary legislation). Parliament often delegates competence to ministers or agencies to issue statutory instruments that detail the application of primary laws:

➢ The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-Keeping Purposes) Regulations 2018 [39], which regulate interceptions carried out by companies.

➢ The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 [32], which defines the authorities that may approve certain types of surveillance.

4. Codes of practice are binding documents issued by the Home Office (similar to the Ministry of Internal Affairs of the Republic of Moldova) and approved by Parliament, intended to ensure the uniform and proportionate application of the law. They establish in detail the procedures that agencies must follow:

✓ Covert Human Intelligence Sources Code of Practice (2022) [8]—regarding the recruitment, use, and protection of undercover agents.

✓ Interception of Communications Code of Practice (2022) [20]—regarding the procedure for requesting and authorizing interceptions.

✓ Equipment Interference Code of Practice (2018) [13]—regarding access to electronic devices and online searches. This code is issued under the IPA and regulates activities involving the manipulation of or access to equipment, such as computers, phones, tablets, or networks.

✓ Covert Surveillance and Property Interference Code of Practice (2002) [7]—developed by the Home Office and issued under RIPA. This Code is an essential guide detailing how public authorities (including the police, intelligence services, and other agencies) must act when using covert surveillance powers and property interference.

It should be noted that all Codes of Practice do not contain restricted information and are publicly available on the website of the Home Office of the United Kingdom. In the Republic of Moldova, by contrast, the organization, tactics, and methods of special investigative activity are regulated by departmental and interdepartmental acts registered at the state level, which mainly contain information constituting state secrets.

Unlike continental legal systems, such as that of the Republic of Moldova, where special investigative measures are defined in an exhaustive legal list (see Article 27 para.

(2) of Law No.59/2012), the British common law system adopts a different approach. It is not based on a rigid list of actions, but on fundamental principles such as legality, necessity, and proportionality. This flexibility allows the rapid adaptation of the legal framework to technological developments and new forms of crime, a defining feature of the British regulatory system [10].

In the United Kingdom, law enforcement relies on a range of undercover operations that correspond to special investigative techniques used in other European countries [10]. These generally include interception of communications [21], the use of human intelligence sources (informants) [7], and various types of surveillance (directed, intrusive, or covert) [30], adapted to the conditions and characteristics of each case. Each of these techniques is regulated in detail through its own Code of Practice, which establishes the precise conditions and procedures for their implementation. A notable distinction is made between the interception of the content of a conversation and its mere visualization (access to communications data) [34]. This visualization is regulated by Part II of the RIPA Act and is essentially considered a form of surveillance, highlighting the nuanced approach of British legislation [41].

Before the adoption of the Investigatory Powers Act (IPA) of 2016, the authorization of special investigative measures in the United Kingdom was outside direct judicial control [15]. Decisions were made by senior officials within the Home Office and by the heads of special services, depending on the specifics of each measure.

With the entry into force of the IPA 2016, a fundamental reform of the surveillance system was introduced, aimed at strengthening guarantees for the protection of privacy and citizens' rights. The law created a single independent oversight body: the Investigatory Powers Commissioner's Office (IPCO) [23].

IPCO assumed and unified the oversight functions previously exercised by three separate commissioners. Its main responsibilities include the judicial approval of warrants for the most intrusive investigative measures, a mechanism known as the "double-lock" [22]. Under this system, a warrant initially issued by a minister or an agency head must also be mandatorily validated by an independent judicial commissioner within IPCO. In addition, IPCO supervises the activities of all law enforcement agencies, including secret police services, ensuring the legality and proportionality of their actions [15].

Both in the United Kingdom and in most European states, there is a tendency to recognize the dialectical unity between criminal prosecution and special investigations aimed at detecting offenses and supporting subsequent investigations [2]. This convergence implicitly leads to a progressive blurring of the legal boundaries between non-procedural and procedural activities.

In assessing the admissibility of evidence obtained through special investigative techniques within criminal proceedings, British courts do not distinguish between the legal nature of such evidence and that of procedural evidence [15]. The use of results obtained through special investigative techniques is recognized as lawful by international norms and by the case law of the European Court of Human Rights [6]. A relevant aspect mentioned is that the Regulation of Investigatory Powers (Codes of Practice) (Jersey) Order 2006, through section 1.5, explicitly provides that if any provision of the Code of Practice appears relevant to any court or tribunal, the results obtained through the application of those Codes must be taken into consideration [30]. By comparison, the current provisions of the Criminal Procedure Code of the Republic of Moldova allow the use of the results of special investigative measures as evidence provided that they are obtained within criminal proceedings (Article 93 para. (4)).

However, it is essential to note that the results obtained through special investigative techniques cannot constitute the sole or principal evidence on which an accusation is based and must be examined by the court under adversarial proceedings, in which both parties have the opportunity to challenge them [22]. Similar provisions are also found in Moldovan legislation: "A conviction judgment cannot be based, to a decisive extent, on [...] evidence obtained as a result of special investigative measures" (Article 101 para. (5) of the Criminal Procedure Code of the Republic of Moldova).

Conclusion. The comparative analysis of the regulation of special investigative measures in the United States of America and in the United Kingdom highlights two distinct, yet complementary models, adapted to legal traditions and to the practical needs of combating organized crime, terrorism, and serious criminality.

In the American system, the absence of a rigid procedural distinction between the pre-trial phase and criminal prosecution grants detectives significant operational flexibility. They may initiate and carry out special actions—including interceptions, surveillance, seizure, or undercover operations—both upon a victim's complaint and on their own initiative, deciding directly on their necessity and proportionality. This overlap between investigation and judicial activity allows for a rapid and efficient response, but raises challenges related to ex ante judicial control and the uniform guarantee of constitutional rights protection, especially depending on the purpose (national security versus ordinary crime).

By contrast, the British system is characterized by a stratified and multi-level legal architecture, specific to the common law tradition. The regulation of special investigations is based on a harmonious combination of case law, primary legislation (PACE 1984, RIPA 2000, IPA 2016—"Snooper's Charter"—and CHIS 2021), secondary legislation, and detailed codes of practice issued by the Home Office. These instruments ensure a transparent, predictable, and proportionate framework, with emphasis on authorization, independent oversight, and the protection of private life. The CHIS Act 2021 represents a significant step by expressly granting criminal immunity for the criminal conduct of undercover agents necessary to maintain cover identities, but also remains a subject of intense debate regarding the ethical and constitutional limits of such powers.

The two systems illustrate the universal tension between the effectiveness of combating crime and respect for the principles of the rule of law. The American model prioritizes operational capacity and police initiative, while the British model emphasizes normative stratification, the transparency of codes of practice (publicly available), and multi-level control. Both have evolved under the pressure of contemporary challenges—digitalization of communications, mass data collection, and transnational threats—demonstrating the adaptability of mature legal systems.

For the Republic of Moldova, which operates within a continental legal system and is engaged in the process of aligning with European standards of human rights protection, the American and British experience offers valuable lessons. A clear, proportionate regulation of special investigative measures subject to effective judicial control is necessary, one that avoids both excessive fragmentation and uncontrolled discretion. The adoption of a legal framework combining operational flexibility with transparent guarantees of proportionality, necessity, and independence of authorization would contribute to increasing the efficiency of criminal investigation bodies, without compromising public trust in the rule of law.

Ultimately, the success of any system of special investigations lies not only in the powers granted to authorities, but in the delicate balance it establishes between collec-

tive security and individual freedoms. A reform inspired by the best practices identified in the United States and the United Kingdom could represent an important step toward modernizing the national system for combating crime in the context of current global challenges.

Bibliographical references

1. ABA Standards for Criminal Justice: Prosecutorial Investigations, Third Edition © 2014, American Bar Association. Available: https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecutorial-investigations/ (citation 09.02.2026).
2. ASHFORD, Peter. The Admissibility of Illegally Obtained Evidence. Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 2019, 85.4.
3. Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (7.03.1983). Available: https://www.justice.gov/archives/ag/attorney-generals-guidelines-general-crimes-racketeering-enterprise-and-domestic (citation 09.03.2026).
4. Bureau of Labor Statistics, U.S. Department of Labor, "Occupational Outlook Handbook: Police and Detectives". Available: https://www.bls.gov/ooh/protective-service/police-and-detectives.htm (citation 09.02.2026).
5. Communications Assistance for Law Enforcement Act (CALEA, 1994) (este o lege privind interceptările telefonice din Statele Unite ale Americii care cere operatorilor de telecomunicații și producătorilor de echipamente de telecomunicații să își proiecteze echipamentele, instalațiile și serviciile pentru a se asigura că au capacitățile de supraveghere necesare pentru a se conforma cererilor legale. CALEA are scopul de a păstra capacitatea agențiilor de aplicare a legii de a efectua supraveghere electronică, protejând în același timp confidențialitatea informațiilor în afara domeniului de aplicare al investigației). Available: https://www.congress.gov/bill/103rd-congress/house-bill/4922 (citation 15.02.2026).
6. Council of Europe. The Case-Law of the European Court of Human Rights on Evidentiary Standards in Criminal Proceedings. Available: https://rm.coe.int/council-of-europe-georgia-european-court-of-human-rights-case-study-ev/16807823c3 (citation 20.02.2026).
7. Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (CHIS Act). Available: https://www.legislation.gov.uk/ukpga/2021/4/contents (citation 09.02.2026).
8. Covert Human Intelligence Sources Code of Practice (2022). Available: https://www.gov.uk/government/publications/covert-human-intelligence-sources-code-of-practice-2022 (citation 14.02.2026).
9. Covert Surveillance and Property Interference Code of Practice. Available: https://data.parliament.uk/DepositedPapers/Files/DEP2014-0226/FINAL_Draft_Surveillance_Code_of_Practice.pdf (citation 18.02.2026).
10. Deployment of Special Investigative Means. Council of Europe, 2013. Available: https://rm.coe.int/deployment-of-special-investigative-means-eng/16807828fa (citation 09.02.2026).
11. Digital Media Law Project, "Recording Phone Calls and Conversations". Available: http://www.dmlp.org/legal-guide/recording-phone-calls-and-conversations (citation 23.03.2026).
12. DRAGOJLOVIĆ Joko, et al. Undercover Investigator in Legislation of the United States and the United Kingdom. Kultura polisa, 2022, 19.1: 62–78. p.65.

13. Equipment Interference Code of Practice (2018). Available: https://assets.publishing.service.gov.uk/media/6841a1b4280ec7236902c0a4/Equipment_Interference_Code_of_Practice_-_June_2025.pdf (citation 15.02.2026).
14. German prosecutor, 10 May 2004, apud Ross.
15. Gov.uk. (Home Office report on the operation of the Investigatory Powers Act 2016). Available: https://www.gov.uk/government/publications/report-on-the-operation-of-the-investigatory-powers-act-2016/home-office-report-on-the-operation-of-the-investigatory-powers-act-2016-accessible-version (citation 10.02.2026).
16. Gov.uk. (Investigatory Powers Act 2016 (IPA 2016): Post Implementation Review). Available: https://www.gov.uk/government/publications/investigatory-powers-amendment-bill-overarching-documents/investigatory-powers-act-2016-ipa-2016-post-implementation-review-accessible-version (citation 20.02.2026).
17. Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties - 28 C.F.R. Part 59. Available: https://www.ecfr.gov/current/title-28/chapter-I/part-59 (citation 23.03.2026).
18. Hoffa v. United States, 385 U.S. 293 (1966). Available: https://supreme.justia.com/cases/federal/us/385/293/ (citation 14.02.2026).
19. Illinois v. Perkins, 496 U.S. 292 (1990). Available: https://supreme.justia.com/cases/federal/us/496/292/ (citation 18.02.2026).
20. Interception of Communications: Code of Practice. (citation 07.03.2026).
21. Investigatory Powers Act 2016 (IPA). Available: https://www.legislation.gov.uk/ukpga/2016/25/contents (citation 09.03.2026).
22. IPCO. (The double-lock). Available: https://www.ipco.org.uk/what-we-do/the-double-lock/ (citation 09.02.2026).
23. IPCO. (What we do). Available: https://www.ipco.org.uk/what-we-do/ (citation 15.03.2026).
24. Katz v. United States, 389 U.S. 347 (1967). Available: https://supreme.justia.com/cases/federal/us/389/347/ (citation 15.03.2026).
25. Malone v. Metropolitan Police Commissioner (1979). Available: https://privacylibrary.ccgnlud.org/case/malone-vs-metropolitan-police-commissioner (citation 14.03.2026).
26. Omnibus Crime Control and Safe Streets Act of 1968, Title III, 18 U.S.C. §§ 2510–2522. (Titlul III al Legii stabilește reguli pentru obținerea comenzilor de interceptare telefonică în Statele Unite. Actul a fost o realizare majoră a războiului lui Johnson c. criminalității). Available: https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1284 (citation 18.03.2026).
27. Paun A., & Shuttleworth K. (2020). Criminal justice and devolution. Institute for Government. Available: https://www.instituteforgovernment.org.uk/explainer/criminal-justice-and-devolution (citation 20.02.2026).
28. Police and Criminal Evidence Act 1984 (PACE). Available: https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice (citation 18.02.2026).
29. Procedura pentru interceptarea comunicațiilor prin cablu, orale sau electronice § 2518 (1)(a), 18 U.S.C. Disponibil: https://www.law.cornell.edu/uscode/text/18/2518 (citat 16.02.2026).
30. Regulation of Investigatory Powers (Codes of Practice) (Jersey) Order 2006. Available: https://www.jerseylaw.je/laws/current/ro_146_2006 (citation 24.02.2026).

31. Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. Available: https://www.legislation.gov.uk/ukdsi/2010/9780111490365 (citation 26.02.2026).
32. Regulation of Investigatory Powers Act 2000 (RIPA). Available: https://www.legislation.gov.uk/ukpga/2000/23/contents (citation 20.03.2026).
33. ROSS Jacqueline E. Law of Undercover Policing. In: Encyclopedia of Criminology and Criminal Justice. Springer, New York, NY, 2014. p. 2865-2871.
34. Rotherham Metropolitan Borough Council. (Acquisition & Disclosure of Communications Data). Available: https://moderngov.rotherham.gov.uk/documents/s108223/Update%20on%20the%20Use%20and%20Operation%20of%20Surveillance%20and%20Acquisition%20of%20Communications%20Data%20Powers%20Append.pdf (citation 09.03.2026).
35. Senior Litigation Counsel, United States Attorney's Office for the Northern District of Illinois (2005), apud ROSS, Jacqueline E., The Place of Covert Surveillance in Democratic Societies: A Comparative Study of the United States and Germany, AJCL, 55(3), 2007, p.493-579.
36. The Attorney General's Guidelines on FBI Undercover Operations (31.12.1980). Available: https://www.ojp.gov/ncjrs/virtual-library/abstracts/attorney-generals-guidelines-fbi-undercover-operations (citation 05.03.2026).
37. The Federal Wiretap Act of 1968. Available: https://www.law.cornell.edu/uscode/text/18/part-I/chapter-119 (citation 04.03.2026).
38. The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. §§ 1801-1812. (Lege care stabilește proceduri pentru supravegherea fizică și electronică și colectarea „informațiilor străine" între „puteri străine" și „agenții ale puterilor străine" suspectate de spionaj sau terorism. Legea a creat Curtea de Supraveghere a Informațiilor Externe (Foreign Intelligence Surveillance Court (FISC)) pentru a supraveghea cererile de mandate de supraveghere de către forțele federale de aplicare a legii și agențiile de informații). Available: https://www.congress.gov/110/plaws/publ261/PLAW-110publ261.pdf (citation 07.03.2026).
39. The Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018. Available: https://www.legislation.gov.uk/uksi/2018/356/contents (citation 10.03.2026).
40. Title III f Omnibus Crime Control and Safe Streets Act of 1968 ("Federal Wiretap Act"). Codificat at 18 U.S.C. §§ 2510–2522. Available: https://www.law.cornell.edu/uscode/text/18/2518 (citation 28.03.2026).
41. UK Government. (RIPA codes of practice). Available: https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice (citation 15.03.2026).
42. United States Department of Justice, "Criminal Resource Manual 28: Electronic Surveillance – Title III of Applications". Available: https://www.justice.gov/archives/jm/criminal-resource-manual-28-electronic-surveillance-title-iii-applications (citation 24.03.2026).
43. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. (Aceasta este o lege federală amplă adoptată în Statele Unite la 26 octombrie 2001, la scurt timp după atacurile teroriste din 11 septembrie). Available: https://www.congress.gov/107/plaws/publ56/PLAW-107publ56.htm (citation 02.03.2026).

CZU: 343.6-056.2 **DOI: https://doi.org/10.5281/zenodo.20825598**

CRIMINAL RESPONSIBILITY OCCURRING IN THE CASE OF COMMITTING CRIMES AGAINST PEOPLE WITH DISABILITIES – THE VICTIM IN CRIMINAL LAW

Viorica STRELCIUC,
PhD, University Lecturer,
State University of Moldova
ORCID: 0009-0005-3461-5294

Abstract

This study aims to analyze the legal and doctrinal framework of offenses committed against persons with disabilities, focusing on the regime of aggravating circumstances as provided by the Criminal Code of the Republic of Moldova. Through this article, we emphasize that the "state of helplessness" (starea de neputință), deriving from physical or mental impairments, increases the degree of social harm of the act, thereby justifying more severe sanctions—ranging from long-term imprisonment to life imprisonment.

Furthermore, the article examines the legal regime of crimes perpetrated against individuals with disabilities, highlighting the conceptual application of aggravating circumstances. The author concludes that the tightening of penalties represents a measure of legal equity rather than mere retribution. The protection of persons with disabilities within criminal law is regarded as an indicator of a state's level of civilization, transforming legislation into a necessary "shield" to restore the balance of power between the aggressor and the vulnerable victim. These aggravating circumstances are rooted in the victim's state of helplessness, caused by the degree of disability present at the time of the offense and verified by medical certification issued in accordance with current legislation.

Keywords: persons with disabilities, offense, criminal liability, aggravating circumstances, victim, ill-treatment, homicide.

RĂSPUNDEREA PENALĂ SURVENITĂ ÎN CAZUL COMITERII INFRACȚIUNILOR ASUPRA PERSOANEI CU DIZABILITĂȚI – VICTIMA ÎN DREPTUL PENAL

Abstract

Acest studiu își propune ca obiectiv, analiza cadrului juridic și doctrinar al infracțiunilor săvârșite asupra persoanelor cu dizabilități, punând accent pe regimul circumstanțelor agravante prevăzut de Codul penal al Republicii Moldova. Prin conținutul prezentului articol, dorim să subliniem că „starea de neputință", derivată din deficiențe fizice sau psihice, sporește gradul prejudiciabil al faptei, justificând pedepse mai aspre (de la închisoare de lungă durată la detențiune pe viață).

Totodată, articolul analizează regimul juridic al infracțiunilor săvârșite împotriva persoanelor cu dizabilități, punând accent pe conceptul de circumstanță agravantă. Autorul concluzionează că asprirea pedepselor reprezintă o măsură de echitate juridică, nu doar de retribuție. Protecția persoanelor cu dizabilități în dreptul penal este privită ca un indicator al gradului de civilizație al unui stat, transformând legislația într-un „scut" necesar pentru restabilirea balanței de putere între agresor și victima vulnerabilă. Circumstanțele agravante se reiterează în starea de neputință a victimei infracțiunii cauzate de gradul de dizabilitate prezent la momentul săvârșirii infracțiunii, confirmat prin certificatele medicale eliberate în corepsundere cu legislația în vigoare.

Cuvinte-cheie: persoane cu dizabilități, infracțiune, răspundere penală, circumstanțe agravante, victimă, rele tratamente, omor.

Introduction. In accordance with Article 77, paragraph (1), item e) of the Criminal Code No.985/2002 [1], the following are considered aggravating circumstances: "the knowing commission of an offense against a minor or a pregnant woman, or by taking advantage of the known or obvious state of helplessness of the victim, due to advanced age, illness, disability, or other factors". Specialized legal doctrine operates with various definitions of the concept of an aggravating circumstance; however, we align our research with the author Popescu Dorin, who states: "Aggravating circumstances represent specific facts, states, situations, settings, or qualities of an objective and subjective nature, established by law, occurring prior to, concurrently with, or subsequent to the commission of the offense, which reveal an increased degree of social harm of the crime and/or the offender's person, influencing the implementation of criminal liability, including the determination of the category and amount of the criminal penalty" [2, p.4].

Consequently, offenses committed against persons with disabilities are classified under the category of crimes committed under aggravating circumstances. Criminal legislation does not provide an autonomous definition of the category of "persons with disabilities", indicating instead in Art. 134^{22} of the Criminal Code that: "A person with disabilities is understood as the person defined as such in Law No.60/2012 on the Social Inclusion of Persons with Disabilities". Along the same lines, according to Article 2 of Law No.60/2012, persons with disabilities are those with physical, mental, intellectual, or sensory impairments which, in interaction with various barriers or obstacles, may hinder their full and effective participation in society on an equal basis with others [3].

The scope of Law No.60/2012 primarily extends to persons with disabilities who are citizens of the Republic of Moldova, citizens of European Union member states, citizens of Schengen Agreement signatory states, and foreign nationals with legal residence in the Republic of Moldova under the conditions of the law.

As a result, disability is the generic term applied to impairments, activity limitations, and participation restrictions, denoting the negative aspects of the interaction between an individual (with a health problem) and the contextual factors in which they find themselves (environmental and personal factors). Offenses committed under aggravating circumstances are criminal acts which, due to the method, purpose, or context (e.g., cruelty, premeditation, recidivism), present an increased social danger, thereby attracting more severe penalties.

In the Republic of Moldova, a series of instruments and regulations have been identified aimed at the integration of persons with disabilities both into social life in general and into specific spheres, such as: integration into the labor market, education, and the state's cultural activities.

Another primary task of the state is the creation of all legal instruments across various branches of law intended to defend the rights and interests of persons with disabilities. The concept that a degree of disability is not a "condemnation" represents a fundamental paradigm shift in modern society. This classification should not be viewed as a social or professional barrier, but as a mechanism through which the state and the community recognize the necessity for reasonable adjustments. Thus, disability becomes the starting point for guaranteeing equal opportunities, transforming vulnerability into opportunity through accessibility and personalized support.

Methods and materials applied. The research conducted is based on the study of specialized doctrine, national social protection and criminal legislation, as well as the judicial practice of courts in the Republic of Moldova and abroad. In order to achieve the aim and objectives set forth above, the logical (rational) method, the historical method,

the systemic analysis method, and the comparative method were applied. Thus, all three perspectives—exegetical, dogmatic, and critical—through which this study is presented involve the use of the following categories and laws of logic: definition; specification and generalization; division and classification; differentiation and integration; analysis and synthesis; demonstration; argumentation; reasoning, etc.

From a historical perspective, particular importance was placed on consulting the doctrine regarding the inclusion of persons with disabilities and the types of criminal penalties applied over time.

From a doctrinal standpoint, within this paper, liability for various offenses committed against persons with disabilities is examined through the lens of the social protection law branch in general, compared to that of criminal law in particular. Furthermore, through a comparative approach, we have succeeded in delimiting the situation of an offender who has committed a crime under a concurrence of aggravating circumstances as opposed to mitigating ones, as well as various forms of manifestation and regulation.

Discussion and results obtained. Criminal legislation grants increased significance to the aggravation of criminal liability in cases where offenses are committed against persons with disabilities. We fully support the legislator's stance, given that a person with a disability, in the event of an offense committed against them:

1. Cannot defend themselves physically or psychologically as a result of their state of vulnerability caused by the degree of disability (regardless of its nature).
2. Is limited in opportunities and resources compared to a healthy person.

In this regard, Romania has developed a study titled *Victims with Disabilities of Crimes in Romania* [4], which notes that adult victims with psychosocial and intellectual disabilities represent one of the most vulnerable categories of participants in the criminal process. Prejudices and excessive procedural formalism combine with a lack of knowledge and/or expertise among professionals, often resulting in decision-making that fails to address the specific needs of persons with disabilities. Based on the aforementioned report, it was established that although maximum efforts are being made to improve the situation regarding the prevention and punishment of crimes against persons with disabilities, the situation remains quite alarming, and the rights and interests of such categories of persons remain under serious question.

Returning to national legislation, we note that according to the Criminal Code (CC), several types of offenses entail increased liability due to the existence of aggravating circumstances, namely:

1. Article 145, paragraph (2), item e): Intentional Homicide:

"*Intentional homicide committed knowingly against a minor or a pregnant woman, or by taking advantage of the known or obvious state of helplessness of the victim, which is due to advanced age, illness, disability, or other factors, is punishable by imprisonment from 15 to 20 years or life imprisonment, compared to paragraph* (1), *which is punishable by imprisonment from 10 to 15 years*".

According to the criminal norm stated above, we distinguish two main aspects of criminal liability: the subjective side and the objective side. These bring to the fore homicide committed knowingly (with intent and knowledge) against a person with disabilities, manifested by the fact that the offender commits the criminal acts specifically by taking advantage of the victim's state of helplessness, which they are aware of at the time of the act. According to doctrine—among the Romans, for example: "*Homicide was considered a public crime and had the special name of 'parricidium', namely the offense consisting of the suppression of the life of a free person in the community*" [5, p.15]. This could be punished

by the death penalty or other types of punishments, such as the amputation of the convict's hand, flagellation, etc., taking various factual circumstances into account.

From ancient times, homicide was considered a very serious offense and was punished accordingly. While we lack direct records regarding homicide specifically committed against a person with a disability, there are opinions stating: "*whoever kills while defending their life from danger is innocent; whoever kills being a small child, or insane, or of unsound mind, is innocent; whoever kills by throwing something and through negligence, shall pay a ransom for the murder to the relatives of the deceased*" [5, p.17]. From this, we observe the differentiation of the type of homicide based on the perpetrator's state and whether the offense was committed intentionally and knowingly, or as a result of age or erroneous perception caused by mental health status.

Returning to the subject of the offense, we determine that the perpetrator's criminal penalty is increased for the murder of a person with a disability, for which imprisonment from 15 to 20 years or life imprisonment may be applied, compared to the first paragraph where only imprisonment is applicable. The question arises: why did the legislator decide that an act committed against a person with a disability is particularly serious, applying life imprisonment in some cases? We note in this regard that the logic for such a penalty lies in the victim's state of helplessness and inability to self-defend, caused by certain physical or mental disabilities. If the subject of the offense, knowing the victim's state of impossibility, committed the criminal act under such circumstances, we classify it as particularly serious and intentional.

On the other hand, we consider the legislator's approach of increasing the applied penalty to be correct, given that it constitutes aggravated (qualified) homicide. This is due to the social relations concerning the fundamental right to life, as well as the additional protection afforded to persons who cannot defend themselves. Aggravating circumstances are determined by the victim of the criminal act, who is a person with impairments that limit their capacity to react, defend themselves, or understand the danger. The essential condition is that the victim is in a position of inability to defend themselves. This state must exist at the time of the act and must be known to the aggressor.

We reiterate that the victim of the criminal offense provided for in Art. 145, para. (2), item e) CC is a person with a disability—specifically, a person who, at the time the offense was committed against them, is medically recognized as having a disability and possesses a certificate issued in the order and manner established by legislation, confirming the illness through the presence of a state of disability.

2. Article 151, paragraph (2), item b): Intentional Grievous Bodily Harm:

"*Intentional grievous injury to bodily integrity or health committed against a person with disabilities is punishable by* ***imprisonment from 10 to 12 years***".

The synthesis regarding intentional grievous injury to bodily integrity or health committed against a person with disabilities concerns an *aggravated form* of offenses against health, defined by the victim's increased vulnerability and the devastating impact on their quality of life. The harsher sanctioning of this act reflects a criminal policy of *zero tolerance* toward abuses directed at social segments at risk, recognizing that an injury to a person with disabilities represents a *double aggression*: against the physical body and against human dignity within the context of vulnerability.

Furthermore, this legal provision aims to apply a more severe penalty to offenders whose criminal acts against a person with disabilities result in serious injuries that are often irreversible or significantly more difficult to recover from compared to a person without pre-existing impairments.

As in the case mentioned above, a criminal act committed against a victim with disabilities presupposes that the perpetrator took advantage of the victim's *state of helplessness or dependency*, making it far more serious and dangerous for the life and health of the victim, as well as for civil society as a whole.

In the same vein, the offense is aggravated by the existence of *aggravating circumstances*, manifested both through the victim's state of helplessness caused by their degree of disability and the latter's inability to self-defend.

3. Article 159, paragraph (2), item a[1]): Illegal Induction of Abortion:

"*...regarding the* ***illegal induction of abortion****, committed against a person in a* ***state of helplessness*** *due to advanced age, illness, disability, or other factors, is punishable by* ***1 to 6 years of imprisonment****, with (or without) the deprivation of the right to hold certain positions or exercise a certain activity for a term of up to 5 years*".

The analysis of the offense of illegal induction of abortion against a person in a state of helplessness (which includes persons with severe physical or mental disabilities) represents a critical intersection between the right to life, bodily integrity, and *reproductive freedom*. The specific nature of such an offense is revealed by the fact that, in the case of a person in a state of helplessness, the freedom of decision and *self-determination* is added to the legal protection, which is gravely violated by the lack of valid consent or by its total disregard.

A state of helplessness may stem from a severe mental disability (lack of discernment), a physical disability that prevents offering resistance, or a state of unconsciousness. Criminal justice ensures that no person is subjected to forced reproductive procedures under the pretext of a "best interest" determined solely by their disability.

4. Article 164, paragraph (2), item c): Kidnapping:

"***Kidnapping*** *a person, committed knowingly against a minor or a pregnant woman, or by taking advantage of the known or obvious* ***state of helplessness*** *of the victim, which is due to advanced age, illness, disability, or other factors, is punishable by* ***imprisonment from 6 to 10 years***".

The kidnapping of a person represents one of the most serious interferences with individual liberty, a fundamental right established both by national constitutions and international conventions. When this act is directed against categories of persons with increased vulnerability—such as minors, pregnant women, or persons in a state of helplessness due to illness or disability—the legislator intervenes with increased rigor, reflected in the sentencing range of 6 to 10 years of imprisonment. This analysis focuses on the ethical and legal foundation for the aggravated classification of kidnapping under these specific circumstances.

The prison sentence of 6 to 10 years reflects a criminal policy aimed at protecting *human dignity*. In the case of persons with disabilities or the elderly, kidnapping is often associated with exploitation, submission to degrading treatment, or intentional neglect.

From a social perspective, this aggravating factor serves a preventive role, discouraging the victimization of those who cannot cry out for help or who depend entirely on a controlled and safe environment. Their kidnapping does not only destroy their freedom of movement; it abruptly nullifies their entire *life-support system*.

Kidnapping committed against a vulnerable person is not merely a crime against liberty, but an act of profound social cowardice that attacks the very foundations of humanity. By establishing high sentencing limits, criminal legislation seeks to balance the power dynamic between the aggressor and the victim who cannot defend themselves, offering a supplementary legal guarantee to those who need it most.

5. Article 177, paragraph (2), item h): Rape:

"*Rape committed against a person in a* ***state of helplessness*** *due to advanced age,*

illness, disability, or other factors, is punishable by imprisonment from 7 to 12 years".

The offense of rape, in its aggravated forms, represents one of the most severe infringements on sexual liberty and human dignity. When forced sexual intercourse is directed against a person in a state of helplessness—caused by disability, illness, or advanced age—the act acquires a dimension of extreme gravity. The prison sentence of 7 to 12 years reflects not only social disapproval but also the necessity for enhanced legal protection for categories of citizens who cannot defend themselves.

In the case of persons in a state of helplessness, a *secondary legal object* of major importance emerges: the physical and psychological integrity of the vulnerable person. Here, the legislator does not merely sanction the lack of consent, but specifically the *exploitation of an incapacity*. The victim is deprived of the possibility to offer physical resistance or to understand the nature of the act, transforming the aggression into a profound violation of human dignity.

Rape against a person with disabilities often has far more devastating consequences than in typical cases. Beyond the physical trauma, the psychological impact is amplified by a sense of total helplessness. For an individual who depends on the care of others, such an act fundamentally destroys trust in their environment and in the safety of their own home or care centers.

From the perspective of criminal policy, the sentencing limits (7-12 years) are calibrated to serve both a deterrent function (general prevention) and a punitive function regarding the offender's lack of scruples. Modern society deems it unacceptable for physical or mental weakness to become an opportunity for sexual aggression.

Evidence and probation in such cases are often complex. The victim may face difficulties in testifying due to disability or age (memory disorders, communication barriers). For this reason, forensic and psychiatric expertise becomes the central pillars of the criminal case. Justice must ensure a hearing adapted to the victim's needs to avoid re-traumatization, while simultaneously respecting human rights protection standards.

Rape committed by taking advantage of the victim's state of helplessness represents a form of violence that attacks the very essence of humanity. By classifying this act with sentencing limits higher than those for simple rape, criminal law assumes the role of a shield for the most fragile members of society. This approach emphasizes that disability or illness should never be a risk factor, but rather a reason for absolute legal and social protection.

6. Article 201¹: Domestic Violence:

"*...regarding domestic violence, paragraph (2) mentions that the intentional action or inaction committed by a family member against another family member, including through information technologies or electronic communications, manifested through ill-treatment, violent acts, etc., committed against persons with disabilities, is punishable by unpaid community service from 180 to 240 hours or imprisonment from 1 to 6 years*".

Domestic violence is one of the most insidious forms of criminality because it occurs in a space that, by definition, should provide protection and support: the home. When this aggression targets a person with disabilities, the act transcends the sphere of a simple domestic conflict, becoming a grave violation of human rights and a manifestation of a profoundly inequitable power dynamic. The legal provision sanctioning these acts reflects the legislator's will to establish a special protection regime for vulnerable categories.

A modern and essential feature of this legal norm is the recognition of violence exercised through *information technologies*. For a person with disabilities, the digital space is often a vital window to the world. The use of this channel by a family member to humiliate, abusively monitor, or isolate the victim represents a form of psychological control

that is extremely effective and destructive. The legislator thus adapts the letter of the law to technological realities, refusing to leave "gray areas" where an aggressor could hide behind a screen.

Unlike other offenses against the person, domestic violence against persons with disabilities places major emphasis on *inaction*. In many cases, the person with disabilities depends entirely on a family member for basic needs: food, hygiene, or the administration of medication. In this context, the deliberate refusal to provide assistance is not merely negligence, but an *active form of violence*. Intentional inaction transforms the victim's dependence into a weapon, causing suffering that can often be more atrocious and lasting than a specific physical assault.

The victim's disability is not just a general mitigating or aggravating circumstance; it becomes a central element of the *legal typology* (*tipicitate*) of this variant of the offense. This legislative choice is based on the principle of equity: the law must be harsher where the victim is more fragile. Persons with disabilities face additional barriers in reporting abuse (communication difficulties, reduced mobility, or fear of losing their only source of care), making state intervention imperative through deterrent penalties.

The analysis of this offense highlights a legal vision that is not limited to punishing an act, but to protecting dignity. By explicitly criminalizing violence against persons with disabilities within the family, including in virtual spaces, criminal legislation recognizes that vulnerability must not be an invitation to abuse, but a foundation for heightened responsibility. Ultimately, the level of civilization of a society is measured by how it succeeds in protecting those who, for reasons beyond their control, cannot protect themselves against those closest to them.

7. Article 280, paragraph (2), item c): Hostage-Taking:

"*The taking or detaining of a person as a* ***hostage*** *and the threat of death, injury to bodily integrity or health, or continued detention of the person in this capacity for the purpose of compelling the state, an international organization, a legal or natural person, or a group of persons to perform or abstain from performing any action as a condition for the release of the hostage, is punishable by* ***imprisonment from 6 to 12 years*** *with (or without) a fine in the amount of 850 to 1350 conventional units*".

The offense of *hostage-taking* represents one of the most complex and grave manifestations of criminality, situated at the intersection of terrorism, deprivation of liberty, and blackmail. By its very structure, this act does not merely threaten an individual's safety but aims to undermine state authority or the stability of international organizations. The prison sentence of 6 to 12 years, accompanied by substantial fines, reflects the extraordinary *social danger* represented by the transformation of a human being into an instrument of political or economic negotiation.

The *primary legal object* of this offense consists of the social relations concerning physical liberty and personal safety. However, the specificity of this act lies in the existence of a *complex secondary legal object*: public order and the authority of institutions. Unlike a simple deprivation of liberty, hostage-taking is not limited to the isolation of the victim; it seeks to coerce an external will (the state, a company, or a group of persons). Thus, the victim becomes a "bargaining chip", and their freedom is conditioned upon the fulfillment of requirements that, under normal circumstances, would not have been accepted by the extorted entity.

Hostage-taking is an offense that denies a person's status as a *subject of law*, transforming them into an object of transaction. Legal analysis reveals a complex structure in which individual violence is intertwined with aggression against the *rule of law*. Through

the severity of the prescribed penalties, the state reaffirms its role as the guarantor of individual liberty, sending a clear message: a person's life and freedom can never be the subject of negotiation, regardless of the political or material stakes invoked by the aggressor.

Conclusions. The evolution of modern criminal law marks a fundamental transition from the punishment of the act itself to a nuanced analysis of the context in which it occurs, with a particular emphasis on the status of the subjects involved. The analyzed text highlights that disability is not merely a medical state regulated by Law No.60/2012, but becomes an essential legal variable that transforms a simple offense into an aggravated (qualified) one. In light of Article 77 of the Criminal Code of the Republic of Moldova, the "state of helplessness" is recognized as a fundamental aggravating circumstance, reflecting an increased degree of social danger posed by the perpetrator who chooses to exploit human fragility.

Ultimately, the tightening of penalties—extending to life imprisonment in cases of aggravated homicide – is not a mere act of retribution, but a measure of legal equity. Criminal legislation acts as a "shield" for those who, due to physical or mental barriers, are unable to offer resistance.

The synthesis of this text leads us to a central idea: the level of civilization of a state and the efficiency of its judicial system are measured not by the number of laws, but by their capacity to restore the balance of power between the aggressor and the vulnerable victim. The protection of persons with disabilities in criminal law is not a privilege but an ethical necessity, confirming that human life and dignity are absolute values that cannot be negotiated or ignored under the pretext of weakness.

Consequently, the core argument underlying the increased gravity of these acts resides in the profound imbalance between the aggressor and the victim. In criminal law, the "state of helplessness"—whether physical, sensory, or intellectual—is the element that transforms a basic offense into a qualified one. When a perpetrator chooses to take advantage of the mobility, communication, or perception limitations of a person with disabilities, they do not merely attack their physical integrity; they consciously exploit a handicap to ensure the success of the crime and their own impunity. This use of vulnerability as a criminal "instrument" reveals an extraordinary social danger inherent in the offender.

Bibliographical references

1. Criminal Code, adopted by the Parliament of the Republic of Moldova, No.985 of April 18, 2002. In: Monitorul Oficial al Republicii Moldova (Official Gazette), 2009, No.72-74, Art. 195.
2. POPESCU Dorin. The Notion and Legal Nature of Mitigating and Aggravating Circumstances. In: Revista Națională de Drept (National Law Review), No.3, 2014, pp.33-37. ISSN 1811-0770 / ISSNe 2587-411X.
3. Law on the Social Inclusion of Persons with Disabilities, adopted by the Parliament of the Republic of Moldova, No.60 of March 30, 2012. In: Monitorul Oficial al Republicii Moldova (Official Gazette), 2012, No.155-159, Art. 508, pp.14-19.
4. Validity Foundation: National Finding Report – Romania. Available: https://validity.ngo/wp-content/uploads/2025/03/National-finding-report-Romania-ro-220426-1.pdf (Accessed 19.03.2026).
5. DOMENCO Irina: Historical Retrospective of the Incrimination of Involuntary Manslaughter in the Criminal Legislation of the Republic of Moldova. In: Conference on "Particularities of Adapting the Legislation of the Republic of Moldova and Ukraine to European Union Legislation", Chișinău, Moldova, November 1-2, 2019.

CZU 343.224.1 **DOI: https://doi.org/10.5281/zenodo.20825868**

JUVENILE CRIMINAL LIABILITY IN THE REPUBLIC OF MOLDOVA: MITIGATED REGIME AND EDUCATIONAL ORIENTATION

Gheorghe GLADCHI,
PhD Habilitated, University Professor,
Department of Criminal Law and Criminology,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0001-9786-1111

Abstract

The article analyzes the legal regime of criminal liability for minors in the criminal law of the Republic of Moldova, highlighting its distinct character compared to that applicable to adults. This form of liability is based on the need to protect the developing person and on the recognition of their reduced level of psychological and social maturity. Consequently, the sanctioning system applicable to minors is characterized by limitation (in terms of age and incrimination), strong individualization, differentiation (educational measures and punishments), and humanization (reduced punishments, educational measures); it is primarily educational rather than repressive in orientation.

An essential element is the age of criminal responsibility, which determines the applicability of criminal norms and reflects the minor's reduced capacity for discernment. Likewise, the purpose of criminal liability is predominantly educational and oriented toward social reintegration, in contrast to the repressive and retributive character specific to adults. In this context, the limitation of categories of punishments applicable to minors and the substantial reduction of sentencing limits are noteworthy. The individualization of the sanction gains increased importance, being adapted to the age and personality characteristics of the minor, and the execution of punishments pursues the same educational goals.

A central element of the criminal regime for minors is the possibility of applying educational coercive measures, either as an alternative to punishment or as a substitute for criminal liability, depending on the gravity of the act and the minor's personality. Overall, juvenile criminal liability constitutes an autonomous institution, based on the principle of proportionality and primarily oriented toward prevention and social reintegration.

Keywords: minor, minority, criminal liability, criminal punishment, age of criminal responsibility, purpose of juvenile criminal liability, sanctioning system for minors, individualization of the punishment applied to the minor, educational coercive measures, execution of punishments applied to minors, release of the minor from criminal liability, release of the minor from punishment.

RĂSPUNDEREA PENALĂ A MINORILOR ÎN REPUBLICA MOLDOVA: REGIM ATENUAT ȘI ORIENTARE EDUCATIVĂ

Abstract

Articolul analizează regimul juridic al răspunderii penale a minorilor în dreptul penal al Republicii Moldova, evidențiind caracterul său distinct față de cel aplicabil persoanelor mature. Această formă de răspundere este fundamentată pe necesitatea protejării persoanei aflate în dezvoltare și pe recunoașterea nivelului redus de maturitate psihică și socială. În consecință, sistemul sancționator aplicabil minorilor se caracterizează prin limitare (sub aspectul vârstei și incriminării), individualizare accentuată, diferențiere (măsuri educative și pedepse), umanizare (pedepse reduse, măsuri educative); orientare preponderent educativă și nu represivă.

Un element esențial îl constituie vârsta răspunderii penale, care determină aplicabilitatea normelor penale și reflectă capacitatea redusă de discernământ a minorului. De asemenea, scopul răspunderii penale

este predominant educativ și orientat spre reintegrare socială, în opoziție cu caracterul represiv și retributiv specific adulților. În acest context, se remarcă limitarea categoriilor de pedepse aplicabile minorilor și reducerea substanțială a limitelor de pedeapsă. Individualizarea sancțiunii capătă o importanță sporită, fiind adaptată particularităților de vârstă și personalitate ale minorului, iar executarea pedepselor urmărește aceleași finalități educative.

Un element central al regimului penal al minorilor îl constituie posibilitatea aplicării măsurilor de constrângere cu caracter educativ, fie ca alternativă la pedeapsă, fie ca substitut al răspunderii penale, în funcție de gravitatea faptei și de persoana minorului. În ansamblu, răspunderea penală a minorilor constituie o instituție autonomă, bazată pe principiul proporționalității și orientată prioritar spre prevenție și reintegrare socială.

Cuvinte-cheie: minor, minoritate, răspundere penală, pedeapsă penală, vârsta răspunderii penale, scopul răspunderii penale a minorului, sistemul sancționator pentru minori, individualizarea pedepsei aplicate minorului, măsurile de constrângere cu caracter educativ, executarea pedepselor aplicate minorilor, liberarea minorului de răspundere penală, liberarea minorului de pedeapsă.

Introduction. Juvenile delinquency is a component part of crime as a whole, while simultaneously possessing its own specificity and distinct characteristic features. The problem of juvenile delinquency has always been one of the most serious and topical, being determined by the particularities of the psychological and moral development of minors, their social immaturity, and being directly linked to the continuous development of society [1, p.256-257].

The specificity of the criminal phenomenon among minors raises particular problems regarding prevention and control, as its causality involves an interaction with a multitude of factors, such as: the particularities of the social-psychological development of minors; an insufficient level of socialization; inadequate psychophysical, age, and social maturity; distorted perceptions of moral priorities; and specific character traits (irascibility, instability), making them easily susceptible to influence from "informal leaders" and adults, etc. [2, p.690]. Here, we note that the age of the minor determines a series of psychological particularities and instability caused by the process of personality formation, the physical and intellectual development of the individual, and puberty. At this age, minors are too categorical, irascible, violent, unbalanced, and incapable of evaluating situations while considering all circumstances; they lack social life experience and do not fully understand the social significance of their conduct—which is dangerous to social values—nor the significance of the sanctions that might be applied to them.

Relative to the age and living conditions of minors, the acts they commit naturally present, as a rule, a less serious degree of social danger than those committed by adults. However, relative to the biopsychical state of minors, the means of criminal legal coercion, primarily punishments, appear poorly suited for achieving the purpose of the law in relation to juvenile offenders. These means of coercion tend toward the re-education of the adult offender, whereas for juvenile offenders, what is required is not re-education (the reconstruction of previous education), but rather an initial education through appropriate means [3, p.217].

All of the aforementioned factors have led our legislator to fundamentally regulate the criminal liability of minors, particularly through the adoption and application of special provisions and a sanctioning system for minors, distinct from those concerning the fight against adult criminality. Furthermore, it should also be mentioned that criminal legislations throughout history have contained special provisions for minors, both regarding the age at which criminal liability began and the criminal punishments to which they were subjected (which were lighter than those for adults) [4, p.302].

Methods and materials applied. The present research is based on a complex theoretical-legal approach to the institution of juvenile criminal liability within the criminal

law of the Republic of Moldova. In conducting the study, general and special legal research methods were used, particularly the methods of analysis and synthesis, the systemic method, the comparative method, and the interpretive method (grammatical, logical, and teleological) of the relevant legal norms.

The method of analysis allowed for a detailed examination of the provisions of the current Criminal Code regarding the criminal liability of minors, while the method of synthesis facilitated the integration of the results into a unified vision of the applicable legal regime. The comparative method was used to highlight the particularities of the national regime in relation to European standards and the general principles of contemporary criminal law. Simultaneously, the systemic method contributed to highlighting the interdependence between the analyzed legal institutions.

The empirical and normative material of the research includes the provisions of the Criminal Code of the Republic of Moldova, related normative acts, as well as relevant legal doctrine. Furthermore, doctrinal sources and specialized studies addressing the issue of juvenile criminal liability from both theoretical and practical perspectives were utilized.

The research is based on a qualitative analysis of the normative and doctrinal framework, aiming to identify the particularities, principles, and purposes of the sanctioning system applicable to minors, in order to highlight its distinct character and its predominantly educational orientation.

Discussions and results obtained. Criminal liability of minors, according to the current Criminal Code, presents certain particularities based on the necessity of protecting the person in formation and the recognition of their reduced level of psychological and social maturity compared to mature persons. Compared to mature persons, the criminal liability of minors is characterized by limitation (in terms of age and incrimination), accentuated individualization, differentiation (educational measures and punishments), humanization (reduced punishments, educational measures), and a predominantly educational rather than repressive orientation. Overall, national legislative solutions confirm that minority does not exclude criminal liability but confers upon it a mitigated legal regime, adapted to age particularities and oriented toward preventing juvenile delinquency through predominantly educational means.

Through its predominantly educational and social reintegration orientation, the criminal liability of minors distinguishes itself fundamentally from the criminal liability of mature persons, which has a predominantly repressive and retributive character. This differentiation does not constitute an unjustified privilege but an expression of the principle of proportionality and the increased protection of the person in formation.

In doctrine, it has been constantly emphasized that the criminal treatment of minors does not represent an arbitrary derogation from the principle of equality before the criminal law, but a differentiated application of the principle of proportionality, adapted to the minor's real capacity for criminal liability [3, p.217-218].

A first essential particularity of the criminal liability of minors consists in the age of criminal responsibility [5, p.32]. While mature persons are criminally liable for any offense, minors have limited criminal liability: from 14 years old – only for offenses expressly provided by law (Art. 21 para. (2) Criminal Code), and from 16 years old – under general conditions (Art. 21 para. (1) Criminal Code). Below the age of 14, criminal liability is excluded. This differentiation reflects the position of the legislator according to which the capacity to awareness of the consequences of the act is incompletely developed in the minor.

The court of law is obliged to establish exactly the age of the minor (day, month, year of birth), because their age represents a circumstance that must be proven and con-

stitutes a mandatory condition for criminal liability [6, p.367].

The specificity of the criminal liability of minors is also manifested in the special approach through which the legislator assesses the offenses committed by minors and their personality when establishing the state of recidivism [7, p.450-451]. Thus, according to Art. 34 para. (5) lit.a) Criminal Code, criminal records for offenses committed during minority are not taken into account when establishing the state of recidivism.

Substantial differences are also found in terms of the purpose of criminal liability. If in the case of adults criminal liability predominantly pursues social retribution and general prevention, in the case of minors the purpose is mainly educational and for social reintegration. Our legislator starts from the premise that the minor can be corrected more effectively through education than through severe criminal coercion.

A third particularity concerns the limitation of the categories of punishments applicable to minors. The legislator has established a restricted sanctioning system for minors, excluding punishments incompatible with the status of a person in the process of formation. A limited number of punishments apply to minors, excluding punishments incompatible with their age, including life imprisonment (Art. 71 para. (3) of the Criminal Code) or unpaid community service for persons who have not reached the age of 16 (Art. 67 para. (4) CC). Life imprisonment cannot be applied to minors, as the minor's personality is not definitively crystallized in an antisocial sense, being always susceptible to rehabilitation.

The criminal law in force does not establish any particularities for applying the penalty of a fine to minors. However, when applying the penalty of a fine to a minor, the principle of the personal nature of liability must be considered, according to which only the person who committed an act provided for by criminal law intentionally or through imprudence is subject to criminal liability and punishment, and in no way any other person (Art. 6 CC). The fine will be applied to the minor if they have a real possibility to pay it from their own sources, so that the minor understands the essence of the punishment applied so that it achieves its purpose [8, p.33].

Punishments such as deprivation of the right to hold certain positions or to exercise a certain activity, deprivation of the right to drive means of transport or the cancellation of this right, the withdrawal of a military or special rank, of a special title, of a qualification (classification) degree and of state distinctions have little relevance in the case of juvenile offenders, because they are almost never applied to minors by virtue of the fact that minors aged between 14 and 18 cannot meet the qualities mentioned in the respective norms; consequently, they do not have those rights of which they can be deprived or which can be withdrawn through the court sentence [9, p.466]. In contrast, mature persons may be subject to the full spectrum of punishments provided by the Criminal Code.

The current system of punishments directs the courts to analyze the circumstances of the case in detail, to take into account the person of the minor, to elucidate the causes of their commission of the offense, and to establish a punishment sufficiently effective both for the correction of the offender, for the realization of the goals of general prevention, and for the restoration of social equity [10, p.482].

This normative option reflects an objectively justified differentiation, compatible with Art. 16 of the Constitution, and corresponds to the requirements of the European Court of Human Rights regarding the differentiated treatment of minors in relation to adults. In the case of *T. v. United Kingdom*, application No.24724/94, Judgment of December 16, 1999, the Court emphasized that minors cannot be subjected to a sanctioning regime identical to that of adults, as their capacity for understanding and participation in the process is structurally different [11]. The Court held that simply holding a minor

criminally liable is not, in itself, contrary to the Convention, but the procedure must be adapted to the age and capacity of the child; the public trial, the intimidating atmosphere, and the complexity of the procedure prevented the minor's effective participation in the judgment. The Court emphasized the principle that the minor must be able to "participate effectively" in the process to benefit from the guarantees of Art. 6 of the European Convention on Human Rights. The judgment is fundamental for the development of standards regarding juvenile justice; the enshrining of the states' obligation to adapt criminal procedure to the age and maturity of the minor; and the definition of the concept of effective participation in the trial.

Another important particularity consists in the substantial reduction of the sentencing limits provided by law for minors compared to adults. This reduction targets the duration of the prison sentence, being an expression of the recognition of the minor's diminished capacity for culpability.

According to Art. 70 para. (3) Criminal Code, when establishing the prison sentence for a person who, at the date of the offense, had not reached the age of 18, the prison term is established from the maximum punishment provided by criminal law for the offense committed, reduced by half. At the same time, the final punishment established for a concurrence of offenses regarding minors cannot exceed the term of 12 years and 6 months (Art. 84 para. (1) of the Criminal Code), and in the case of a cumulative sentence, the final punishment regarding minors cannot exceed the term of 15 years (art. 85 para. (1) of the Criminal Code).

From a doctrinal perspective, the reduction of the amount of the punishment does not constitute unjustified leniency, but expresses the reduction of imputability, determined by the incomplete development of discernment and self-control. The European Court of Human Rights reaffirmed this thesis in the case of *Blokhin v. Russia*, Grand Chamber, 2016 [12], stating that the state's reaction to juvenile delinquency must be proportional, individualized, and adapted to the particularities of the minor's age, emphasizing that the application of repressive measures of a quasi-criminal nature, without adequate procedural guarantees, is incompatible with Art. 6 and Art. 5 of the European Convention, as well as with the requirements for the special protection of the child in conflict with the law.

The Particularity of Individualizing the Minor's Punishment. Judicial individualization of the punishment acquires, in the case of minors, a qualitatively superior dimension, the court being obliged to analyze not only the act and the form of guilt, but also the psychosocial profile of the minor, the family environment, the level of education, the degree of influence exercised by other persons, and the concrete circumstances of the commission of the offense. Individualization of the minor's punishment is broader and more flexible than the individualization of the punishment in the case of mature persons.

In solving this issue, the court of law, in addition to the general criteria set out in Art. 75 of the Criminal Code, will also take into account the circumstances provided by Art. 475 para. (1) of the Criminal Procedure Code, established during the criminal investigation and the trial of the case (the minor's age; the conditions in which the minor lives and is educated, their degree of intellectual, volitional, and psychological development, the particularities of character and temperament, their interests and needs; the influence of adults and other minors on the minor; the causes and conditions that contributed to the commission of the offense).

According to Art. 475 para. (3) of the Criminal Procedure Code, the criminal investigation body, the prosecutor, or, as the case may be, the court of law orders the drafting of

the pre-sentence psychosocial evaluation report of the minor, i.e., a complex analysis of the bio-psycho-sociology of the minor.

The minor's behavior is often the result of the environment, not of a stable criminal choice. Therefore, the judge must evaluate whether the act is the result of a real criminal urge or of age-related showmanship, the influence of the entourage, or educational deficiencies. Imprisonment becomes a measure of ultima ratio.

In the process of individualizing the punishment, the court is obliged to take into account, in the case of minors, the exact age, living and educational conditions, the influence of the family environment, and the level of psychological development—elements that do not have the same legal relevance in the case of adults.

In addition, minority constitutes a mandatory legal mitigating circumstance, unlike the situation of mature persons. According to Art. 76 para. (1) lit.b) Criminal Code, when establishing the punishment, the commission of the offense by a minor is considered a mitigating circumstance. At the same time, the minority of the person who committed the offense, in accordance with Art. 79 para. (1) Criminal Code, is considered an exceptional circumstance, a fact which gives the court the right to apply to the minor a punishment below the minimum limit provided by criminal law for the respective offense.

The punishment applied to the minor is, necessarily, milder. When establishing the minor's punishment, the court, in its judgment, is to argue each of the indicated circumstances (Art. 75 Criminal Code, Art. 475 Criminal Procedure Code) with an indication of the evidence that confirms or, as the case may be, refutes them, to give an assessment of the pre-sentence psychosocial evaluation report of the minor and, in case it does not agree with the conclusions and proposals in the report, it will motivate their rejection [8, p. 33].

Applying the death penalty [Note: usually "pedeapsa cu închisoare" in the text refers to imprisonment] or imprisonment to a minor must be the court's last solution and only if another punishment will not achieve its purpose [8, p.34]. In the same vein, in the Decision of the Plenum of the Supreme Court of Justice regarding judicial practice in criminal cases regarding minors No.39 of November 22, 2004, point 19, it is indicated that all measures provided by law should be taken to apply to the minor defendant a non-custodial punishment, or to establish a milder punishment than that provided by law (Art. 79 Criminal Code) [6].

1. Particularity of the Execution of Punishments. Through the particularities of the execution of punishments applied to minors by the court, priority is given to the execution of the prison sentence, as a form of criminal reaction with maximum impact on the minor's development, without excluding the existence of special execution rules also in the case of other criminal punishments applicable to this category of persons.

The execution of the prison sentence applied to minors, as a priority, targets the special detention regime of minors; execution of the punishment in institutions separate from adults; the emphasis on education, training, and social reintegration, not on repression; the reduced duration of punishments and the possibility of their review; adaptation of the execution regime to age particularities. According to Art. 72 para. (5) of the Criminal Code, minors execute the prison sentence in detention centers for minors and young people, taking into account the personality of the convict, criminal records, and the harmful degree of the offense committed.

This approach is justified, because deprivation of liberty most intensely affects the development of the minor's personality. International standards and the jurisprudence of the European Court of Human Rights (for example, the cases *Blokhin v. Russia*; *Bouamar v.*

Belgium) [12; 13] treat the detention of minors as a measure of last resort, being admissible only in exceptional circumstances and, if it is proportional, adapted to age and, only if it pursues a real educational goal, not sanctioning, being accompanied by adequate procedural guarantees.

Particularities also exist in the case of minors performing unpaid community service (duration, schedule, compatibility with studies) or the penalty of a fine (correlation with the material situation and with the role of legal representatives).

2. Educational Coercive Measures as an Alternative Solution. A central element of the criminal regime of minors is the possibility of applying educational coercive measures, provided for in Art. 104 Criminal Code, either as an alternative to punishment (Art. 93 CC), or as a substitute for criminal liability (Art. 54 CC), depending on the gravity of the act and the person of the minor. Mature persons do not benefit from such an alternative mechanism, their liability being realized exclusively through punishment.

Educational coercive measures are criminal law sanctions applicable to minors under the conditions of the law, with a view to their education and re-education. These measures reflect the modern orientation of juvenile criminal law toward restorative juvenile justice and the minimum intervention of criminal repression. They do not aim at sanctioning in the classic sense (repression), but at correcting conduct and preventing recidivism, making the minor responsible and strengthening their social ties. Educational coercive measures are situated in an intermediate zone between criminal law and child protection, having a sui generis legal nature, since, although they are qualified by the Criminal Code as safety measures and constitute criminal law sanctions (Art. 98 para. (2) Criminal Code), they approach through their purpose and content the mechanisms specific to child protection, without being confused with either criminal punishments or extra-penal protection measures.

Our legislator gives priority to educational measures over punitive ones. According to Art. 75 para. (3) Criminal Code, for the commission of a minor or less serious offense, the punishment is applied to the minor only if it is assessed that taking the educational measure is not sufficient for the minor's correction. This provision enshrines the principle of the subsidiary and exceptional nature of the criminal punishment applied to the minor, in relation to educational coercive measures. The norm establishes a rebuttable legal presumption in favor of educational measures, in the sense that, for minor and less serious offenses, the primary criminal reaction must be non-penal, and the punishment constitutes ultima ratio. Therefore, the punishment represents an exceptional measure, admissible only if the court demonstrates, through rigorous motivation, that educational measures cannot ensure the minor's correction.

The purpose of Art. 75 para. (3) Criminal Code is double: a) protecting the best interest of the minor, avoiding unnecessary criminal stigmatization; and b) directing the criminal liability of minors toward education and social reintegration, not toward repression.

3. Release of the Minor from Criminal Liability with the Application of Educational Coercive Measures. The Criminal Code enshrines the possibility of releasing the minor from criminal liability, with the application of educational coercive measures, when the gravity of the act, the person of the minor, and the circumstances of the case allow the purpose of the criminal law to be achieved without pronouncing a conviction.

It follows from the provisions of Art. 54 Criminal Code that the application of release from criminal liability of minors is possible only in case of compliance with the following cumulative conditions: a) the offense is committed for the first time; b) the offense committed is minor or less serious; c) at the criminal investigation or at the trial of the case it

is established that the process of correcting the minor is possible without the perpetrator being subject to criminal liability, taking into account the recommendations of the resocialization services formulated in the social investigation report.

From a doctrinal perspective, this institution represents a justified exception to the principle of the inevitability of criminal liability; based on the idea that early criminal stigmatization is incompatible with the best interest of the child and with the objective of social reintegration.

4. Release of the Minor from Criminal Punishment. Distinct from release from criminal liability, criminal legislation also provides for the release of the minor from punishment, in situations where the court finds that the effective application of the punishment is no longer necessary. This solution presupposes the existence of a conviction, but the suspension or replacement of the execution of the punishment, considering the educational progress achieved (Art. 90 and 93 Criminal Code).

Although the Criminal Code of the Republic of Moldova does not enshrine an autonomous normative regime for conviction with conditional suspension of execution of the punishment for minors, the particularities of its application result from the systemic interpretation of art. 90 Criminal Code in conjunction with Art. 485 of the Criminal Procedure Code and with the special principles of the criminal liability of minors. Through the provisions of Art. 485 para. (1) CPC, conditional suspension is given a distinct status in the minor's process, which is confirmed by the text "the court is to examine the possibility of conditional suspension of execution of the punishment by the minor". This wording is not neutral, but establishes a positive procedural obligation of the court, transforming suspension into a priority option, not an optional-random one. Compared to adults, suspension is a faculty; compared to minors, suspension is a mandatory analyzed alternative, which represents the first essential particularity.

In the case of the adult, Art. 90 para. (1) Criminal Code operates with the criterion "it is not rational for them to execute the punishment", and in the case of the minor, this formula must be reinterpreted in light of Art. 75 para. (3) Criminal Code (priority of educational measures), and Art. 93 Criminal Code (release of minors from punishment), as well as the principle of the best interest of the child. Thus, the "irrationality of executing the punishment" in the minor is not primarily related to the gravity of the act, but to the level of psychosocial development, the capacity for education in the community, the role of the family and the social environment, and the potential for reintegration without detention.

The motivation of the sentence is more demanding in the case of the minor. Although Art. 90 para. (1) of the Criminal Code requires the motivation of the suspension in general, in the case of the minor, the court must additionally motivate why the suspension is sufficient for the educational purpose of the punishment, how the probation conditions contribute to the formation of licit conduct, and why isolation from society is not necessary.

According to Art. 90 para. (61) Criminal Code, in the case of sentencing the minor with conditional suspension of execution of the punishment, participation in the probation program is mandatory. This is the only express particularity in the Criminal Code. The difference from the adult is structural. For the adult, the probation program is optional, and for the minor it is mandatory and involves a structured educational intervention.

Although the Criminal Code does not provide for distinct probation conditions for the minor, in practice and doctrine it is necessary to avoid excessively restrictive conditions; formulating obligations in a language accessible to the minor; correlating obligations with schooling, psychological counseling, and family involvement. At the same

time, the "identical" application of conditions as in the case of adults would violate the principle of proportionality and the principle of individualizing the punishment. Conviction with conditional suspension of execution of the punishment represents the typical form of avoiding the minor's detention. Its non-application must be explicitly justified, demonstrating why community measures are insufficient. Therefore, conditional suspension acquires, in the case of the minor, the character of a preferential measure, with a predominantly educational function, being necessarily accompanied by a probation program and subject to a more demanding standard of motivation and individualization than in the case of the adult.

Release of minors from punishment with the application of educational coercive measures is regulated by Art. 93 Criminal Code and detailed procedurally by Art. 485-486 of the Criminal Procedure Code. In material terms, Art. 93 Criminal Code establishes a presumption of preference for educational coercive measures (Art. 104 Criminal Code), when the minor has committed a minor, less serious, or serious offense and the court finds that the purposes of the punishment can be achieved without its execution. Release is not equivalent to the absence of criminal liability: the court pronounces a sentence of conviction, but substitutes the criminal punishment with educational coercive measures, appropriate to the age and personality of the minor.

If the Court of law has not applied the provisions of Art. 483 para. (5) of the Criminal Procedure Code, according to Art. 486-487 of the Criminal Procedure Code, it must examine, when adopting the sentence, first the possibility of releasing the minor from punishment in accordance with the provisions of Art. 93 of the Criminal Code. In this case, Art. 93 CC obliges the Court to examine the possibility of releasing the minor from criminal punishment not only for minor or less serious offenses, but also for serious offenses [8, p.31].

Thus, the court, when deliberating the sentence, must prioritize analyzing the possibility of releasing the minor from punishment, and in the situation where it establishes the conditions provided for in art. 93 Criminal Code, by adopting a conviction sentence, it orders the release of the minor convict from the criminal punishment and applies to them educational coercive measures provided for by Art. 104 Criminal Code (Art. 486-487 Code of Criminal Procedure).

Release from criminal punishment expresses the flexibility of the criminal reaction toward the minor, allowing its adjustment depending on the evolution of the subject's personality, oriented toward education and re-education, social reintegration, and preventing recidivism, in accordance with international standards regarding the character of last resort of the custodial criminal punishment in relation to minors. As we have shown, deprivation of the minor's liberty must be exceptional and protective.

A final essential particularity consists in the reduction of the criminal legal terms applicable to minors. The regime for minors is characterized by reduced terms regarding parole (conditional release) before the term (Art. 91 Criminal Code), the statute of limitations for criminal liability (Art. 60 Criminal Code), and the statute of limitations for the execution of the conviction sentence (Art. 97 Criminal Code).

For the application of parole before the term to minors, the fractions of the punishment that must be executed are smaller (at least one-third of the punishment term established for committing a minor or less serious offense or at least half of the term established for committing a serious offense), compared to the larger fractions in the case of adults (Art. 91 para. (6) of the Criminal Code).

The statute of limitations for criminal liability is reduced by half for persons who

were minors at the date of the offense (Art. 60 para. (7) Criminal Code). This reflects the idea that the social resonance of the act decreases faster, and the punishment applied late loses its educational function. The statute of limitations for the execution of the punishment is also reduced by half for persons who, at the date of the offense, were minors (Art. 97 para. (2) of the Criminal Code).

These reductions are justified doctrinally by the need to avoid the long-term consequences of criminal conviction that are disproportionately harmful to the minor, affecting their process of social formation. In the case of *Blokhin v. Russia* [12], the European Court of Human Rights emphasized that the effects of criminal repression on minors must be limited in time and intensity. The Court consolidated the standards regarding the protection of minors in criminal proceedings, stating that the deprivation of a child's liberty, in the absence of procedural guarantees and adequate medical care, constitutes concurrent violations of articles 3, 5, and 6 of the European Convention on Human Rights, emphasizing the state's obligation to adapt the justice system to the specific vulnerability of minors.

At the same time, the European Court of Human Rights formulated important standards, namely that the best interest of the child must be paramount; before detention, a medical assessment is necessary; children, especially those with disabilities, require increased procedural guarantees; the system must be adapted, not identical to that of adults.

Conclusions. The analysis of the legal regime of criminal liability of minors in the criminal law of the Republic of Moldova reveals the existence of an autonomous institution, based on the recognition of the bio-psycho-social particularities of the person in formation, on the principle of differentiating liability according to age and the level of psychosocial maturity of the subject of the offense, on the necessity for increased protection of the child, and on the priority orientation of the criminal reaction toward education, social reintegration, and prevention, and not toward repressiveness.

Compared to mature persons, minors benefit from a mitigated legal regime, characterized by the limitation of the sphere of criminal liability, the relativization of discernment, the humanization of sanctions, and the priority of educational coercive measures. The Criminal Code thus enshrines a coherent system, based on the principles of substantial differentiation from the regime applicable to adults, accentuated individualization, proportionality, humanism, and the best interest of the child, in accordance with constitutional and European standards. Minority does not exclude criminal liability, but confers upon it a distinct content and purpose, adapted to the developing personality of the perpetrator.

Proceedings against minors must be age-appropriate and guarantee effective participation. "Effective participation" implies that the minor is not just a spectator of the process, but a real participant, capable of understanding and exercising their rights. This wording, as already shown, comes from the jurisprudence of the European Court of Human Rights and refers to how a criminal trial or any judicial procedure involving a minor must be organized.

The limitation of the categories of punishments applicable to minors, the reduction of the term and amount of punishments, as well as the establishment of mechanisms such as release from criminal liability or from punishment, and the reduced terms for the statute of limitations and parole highlight the politico-criminal orientation toward reducing repression and favoring re-education.

In perspective, the efficiency of this regime depends on the consistent application of educational measures, the development of probation services, and the strengthening

of social reintegration mechanisms. In conclusion, the criminal liability of minors constitutes a special form, legally and criminologically justified, intended to protect the best interest of the child and to achieve the goals of the criminal law through appropriate and proportional means.

Bibliographical references

1. Gladchi Gh. Criminologie. Chișinău: Academia „Ştefan cel Mare" a MAI, 2019. 619 p.
2. Наумов А.В. Российское уголовное право. Общая часть. 6-е издание. Москва: Проспект, 2020, 782 p.
3. Dongoroz V., în colab. Explicații teoretice ale Codului penal român. Partea generală, vol. II. București: Editura Academiei, 1970. 469 p.
4. Boroi Al. Drept penal. Partea generală. București: Editura C.H. Beck, 2006. 372 p.
5. Gladchi Gh., Popa V. Conceptul și particularitățile criminologice ale criminalității minorilor. În: Revista Națională de Drept, nr. 5 (187), Chișinău, 2016, p. 31-36.
6. Hotărârea Plenului CSJ cu privire la practica judiciară în cauzele penale privind minorii, nr. 39 din 22 noiembrie 2004, pct. 2. În: Hotărâri explicative în materie penală ale Plenului CSJ, coord. ed.: Mihai Poalelungi, Diana Sârcu-Scobioală. Chișinău: Institutul Național al Justiției, 2019 (Tipografia „Sirius"), p. 365-381.
7. Боровиков В.Б., în colab. Уголовное право России. Общая часть. 2-е изд. испр. доп. Под ред. В. П. Ревина. Москва: Юстицинформ, 2010. 496 p.
8. Ulianovschi Gh., în colab. Ghid cu privire la aplicarea pedepsei. Cu sprijinul Asociației Barourilor Americane „Inițiativa pentru supremația Legii" și Departamentul de Stat al SUA. Chișinău, 2014. 93 p.
9. Popescu D. Particularitățile pedepsei penale aplicate minorilor. În: Conferința științifică internațională „Interesul superior al copilului: abordare socio-culturală, normativă și jurisprudențială", 30.09-01.10.2022, USM. Chișinău: CEP USM, p.460-479.
10. Семернева Н.К., în colab. Уголовное право. Общая часть. / Отв. ред. И.Я. Козаченко и З.А. Незнамова. Москва: Изд. группа ИНФРА М-Норма, 1998. 516 p.
11. CEDO, cauza T. v. Regatului Unit, cererea nr.24724/94. Hotărârea din 16 decembrie 1999, §§ 84-89. Disponibil: https://hudoc.echr.coe.int.
12. CEDO, cauza Blokhin v. Rusia [MC], cererea nr.47152/06. Hotărârea din 23 martie 2016, §§ 179–180, 194. Disponibil: https://hudoc.echr.coe.int.
13. CEDO, cauza Bouamar v. Belgiei, cererea nr.9106/80. Hotărârea din 29 februarie 1988, Seria A nr.129, § 50. Disponibil: https://hudoc.echr.coe.int.

CZU 343.8:342.7 **DOI: https://doi.org/10.5281/zenodo.20825943**

ENSURING THE RIGHT TO INFORMATION WITH REGARD TO PERSONS SENTENCED TO IMPRISONMENT

Simion CARP,
PhD, University Professor,
Senior Scientific Researcher, Institute of Scientific Research and Comparative Law,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-4772-8325

Oleg RUSU,
PhD, Associate Professor,
Department of Criminal Law and Criminology,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID ID: 0000-0002-0879-4154

Abstract

In this article, the authors undertake a comprehensive analysis of the detainee's right to information, highlighting the international and national legal framework, the doctrinal correlations, and the directions for improving the mechanisms that guarantee this right. The study demonstrates that the detainee's right to information is a fundamental right, constitutionally guaranteed and further detailed through the penitentiary enforcement legislation of the Republic of Moldova. This right cannot be suppressed solely due to the deprivation of liberty but may only be limited in a proportional and justified manner. At the same time, the main issue regarding its effective realization lies in the deficient implementation of the existing regulations. The principal problems are related to the lack of access to legal information, the formalism of procedures, and disproportionate restrictions.

The conclusions emphasize that the free exercise of the right to information by each participant in social relations within the penitentiary enforcement sphere, primarily by convicted persons, represents a fundamental condition for the effectiveness of public oversight, as it provides the possibility to obtain the necessary information and to exert influence on state authorities. At the same time, it is important to take into account that persons held in places of detention have a limited scope of rights and freedoms, including with regard to informational rights, as this is necessary for ensuring the detention regime and for achieving the objectives of criminal punishment.

Keywords: right to information, detainees, imprisonment, penitentiary.

REALIZAREA DREPTULUI LA INFORMAȚIE ÎN PRIVINȚA PERSOANELOR CONDAMNATE LA PEDEAPSA CU ÎNCHISOARE

Abstract

În articol, autorii întreprind o analiză complexă a dreptului deținutului la informație, evidențiind cadrul normativ internațional și național, corelațiile doctrinare și direcțiile de perfecționare a mecanismelor de garantare a acestui drept. Studiul realizat a demonstrat că dreptul deținutului la informație este un drept fundamental, garantat constituțional și detaliat prin legislația execuțional-penală a Republicii Moldova. Acesta nu poate fi suprimat prin simplul fapt al privării de libertate, ci doar limitat în mod proporțional și justificat. Totodată, principala problemă privind realizarea sa efectivă rezidă în caracterul dificitar al implementării. Principalele probleme sunt legate de lipsa accesului la informație juridică, formalismul procedurilor și restricțiile disproporționate.

În concluzii se punctează că exercitarea liberă a dreptului la informație de către fiecare dintre participanții la raporturile sociale din sfera execuțional-penală, în primul rând de către persoanele condamnate, reprezintă o condiție de bază pentru eficiența controlului public, întrucât oferă posibilitatea obținerii informațiilor necesare și exercitării unei influențe asupra autorităților statului. Totodată, este important să se țină cont de faptul că persoanele aflate în locuri de detenție au un volum limitat de drepturi și libertăți, inclusiv în ceea ce privește drepturile informaționale, întrucât acest lucru este necesar pentru asigurarea regimului și realizarea scopurilor pedepsei penale.

Cuvinte-cheie: dreptul la informație, deținuți, pedeapsa cu închisoare, penitenciar.

Introduction. The right to information is recognized at the international level as a fundamental right, indispensable for the functioning of the rule of law and for the exercise of other human rights. In the case of persons deprived of liberty, this right acquires particular importance, as the lack of access to information amplifies the vulnerability inherent in detention.

When analyzing the right to information as an instrument for increasing the efficiency of public oversight, it must be taken into account that this right has a complex content and consists of numerous elements whose essence and position within the legal system have not been sufficiently studied.

The right to information has particular importance for persons held in places of detention. The effectiveness of the realization of this right determines, to a large extent, the success of protecting other rights and freedoms, as well as the effectiveness of public oversight over the penitentiary enforcement system.

To a significant extent, the outcome of the realization of the right under analysis depends on the quality of the regulatory framework in this field, as well as on its coherence, consistency, and completeness. In this context, the further analysis of the right to information should begin with a careful study of the legislation governing the social relations in question and of the degree to which this right is regulated under the conditions of places of detention.

At the same time, it is important to note that legal possibilities in the informational sphere differ depending on the person's belonging to one or another category of individuals held in places of detention. For this reason, this factor must be taken into account when analyzing the legislative framework.

Methods and materials applied. Within the scope of the present study, the following methods were applied: analysis, synthesis, comparison, and logical reasoning. The materials used consist of legislation and publications by researchers in the field.

Discussions and results obtained. The process of establishing the right to information is clearly reflected in a number of essential documents, including:

1. *The Universal Declaration of Human Rights* (1948) [1]. Article 19 proclaimed that every person has the right to seek, receive, and impart information and ideas through any media and regardless of state frontiers;

2. *The Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) [2]. Article 10 confirmed the right of every person to freely receive and impart information and ideas without interference by public authorities and regardless of state frontiers;

3. *The International Covenant on Civil and Political Rights* (1966) [3]. Article 19 continued the process of international recognition of the right to information, establishing that every person has the right to seek, receive, and impart information and ideas of any kind, regardless of state frontiers, orally, in writing, in print, in the form of art, or through any other media of their choice.

Article 34 of the Constitution of the Republic of Moldova provides for the right to information, establishing that access to information of public interest may not be restricted [4]. The constitutional provision does not establish exceptions related to a person's status, which means that persons deprived of liberty are also holders of this right.

At the same time, article 54 of the Constitution allows the restriction of the exercise of certain rights and freedoms, but only under the conditions provided by law and with respect for the principles of proportionality and necessity in a democratic society [4]. Therefore, deprivation of liberty cannot justify the complete suppression of the right to information, but only certain reasonable limitations strictly determined by the requirements of the penitentiary regime and by the need to ensure order and security.

This constitutional provision constitutes the foundation of the informational legal status of persons held in places of detention.

Specialized literature pays increased attention to the rights of persons deprived of liberty, emphasizing that detention does not eliminate their status as subjects of law. Thus, V. Dongoroz notes that "a custodial sentence cannot have the effect of suppressing fundamental rights that are not incompatible with the state of detention" [5, p. 52].

Some authors emphasize that "the right to information has an instrumental function, as it facilitates the exercise of other fundamental rights, such as the right to defense, the right to petition, or access to justice" [6, p. 186]. In the case of detainees, access to information regarding their rights and obligations, the detention regime, and administrative or judicial procedures is indispensable for the protection of human dignity.

In turn, A. Boroi emphasizes that "the right to information represents a guarantee of the legality of the execution of the sentence, as it allows the detainee to become aware of and challenge possible abuses by the penitentiary administration" [7, p. 41]. Romanian authors also underline the role of information in the process of the social reintegration of the convicted person, considering it an educational and preventive instrument.

In Western doctrine, the detainee's right to information is analyzed in close connection with the European standards of human rights. In this regard, it is emphasized that "access to information constitutes an essential component of the observance of Article 10 of the European Convention on Human Rights, even within the penitentiary environment" [8, p. 214].

It is also noted that "the limitations imposed on detainees must be interpreted restrictively, and any interference with the right to information must be justified by imperative security considerations" [9, p. 97]. From this perspective, informing detainees is viewed as an element of good penitentiary governance and of the prevention of inhuman or degrading treatment.

The most extensive body of legislative regulation concerning the right to information, which details the fundamental norms and requirements mentioned above, has been adopted with regard to persons sentenced to imprisonment. This situation is explained by the fact that this category of citizens is subject to the most significant restrictions on informational rights and freedoms. The overwhelming majority of the norms that define the informational legal status of this category of persons are found in the penitentiary enforcement legislation of the Republic of Moldova.

Thus, the Execution Code of the Republic of Moldova provides that convicted persons benefit from all the rights, freedoms, and obligations of the citizens of the Republic of Moldova, with the exceptions and restrictions established by law [11, Art. 186 para. (1)].

Specifically, the penitentiary enforcement legislation guarantees:

– the right to be informed by the institution or authority responsible for the execu-

tion of the sentence, in a language that he or she understands, about his or her rights and obligations, the manner and conditions for the execution of the sentence, as well as about any modification of the manner and conditions for the execution of the sentence (Art. 169 para. (1) letter a) of the Execution Code of the Republic of Moldova);

– the right to submit petitions (requests, complaints, proposals, notifications) to the administration of the institution or authority responsible for the execution of the sentence or to hierarchically superior bodies, the court of law, the prosecutor's office, central and local public administration authorities, public associations, other institutions and organizations, including international ones (Art. 169 para. (1) letter c) of Execution Code of the Republic of Moldova).

Detainees exercise their right to information, including access to legal provisions and documents regarding the execution of custodial sentences or preventive detention, under the conditions stipulated by Art. 208 and 209 of the Execution Code.

According to Art. 208 of the Execution Code of the Republic of Moldova, the convicted person is ensured access to information disseminated through mass media.

The prison administration has the obligation to take all necessary measures to ensure the application of legal provisions regarding the free access to information for convicted persons.

The penitentiary ensures the reception of radio and television broadcasts. Within the limits of the detention regimes provided for in the Execution Code of the Republic of Moldova and in the Statute on the Execution of Sentences by Convicted Persons, the convicted person may use a radio set, television, personal cassette player, or any other devices authorized by the prison administration, provided that the payment for the consumed electrical energy is made.

The convicted person is allowed to purchase, through the trade network, literature, subscribe to and receive newspapers and magazines, without limitation as to their number, at the expense of their own funds or those of other persons.

The convicted person is prohibited from subscribing to, receiving, purchasing, possessing, or distributing publications that promote war, ethnic, national, racial, or religious intolerance, the cult of violence and cruelty, as well as publications of a pornographic nature. The convicted person is prohibited from accessing the Internet network [10, Art. 208].

Article 209 of the Execution Code of the Republic of Moldova provides for ensuring access to legal provisions and documents regarding the execution of custodial sentences. Thus, the provisions of the Criminal Code concerning the execution of the sentence, the provisions of the Execution Code, the Statute on the Execution of Sentences by Convicted Persons, the provisions of the Law on Access to Information of Public Interest, the provisions of orders issued on the basis of the Execution Code, and the provisions of the penitentiary's internal regulations, as well as any amendments thereto, are brought to the attention of convicted persons or are made available to them, in Romanian or in a language they understand, immediately after their admission to the penitentiary.

The texts of the legal provisions specified above are made available to convicted persons in penitentiaries, in accessible places. In the case of convicted persons who have communication impairments, the respective information is communicated to them through methods that allow them to understand it.

It should be noted that the convicted person is not deprived of the possibility of becoming familiar with the documents contained in the personal file. In this regard, Art. 201 para. (3) of the Execution Code of the Republic of Moldova provides that the person

sentenced to imprisonment and his or her defense counsel have access, in the presence of a person specifically designated by the prison director, to the personal file.

According to point 48 of the Statute on the Execution of Sentences by Convicted Persons, detainees must be informed about the existence of acts (documents) officially received by the penitentiary that introduce changes to their legal situation. These documents are:

- Referral documents to the court, summonses, or indictments;
- Documents constituting the grounds for detention;
- Documents that modify the grounds for detention [11, point 38].

Upon receiving documents that modify the legal status of the detainee, the special records department must inform the detainee of these changes, record the modification in the personal file and in the other documents, and communicate the change to the relevant services of the penitentiary in order to ensure the lawful application of the detention regime (point 49 of the Statute).

Informing detainees about the content of procedural acts issued by the court or by the criminal investigation body constitutes an obligation of the penitentiary administration (point 50 of the Statute).

According to Art. 213 para. (1) of the Execution Code of the Republic of Moldova, the convicted person has the right to short-term and long-term visits, which are granted in the manner and under the conditions established by the Execution Code and the Statute on the Execution of Sentences by Convicted Persons.

In this context, the possibility of exchanging information with relatives, friends, defense counsels, and state authorities contributes to achieving two objectives:

- The rehabilitation of the convicted person and the prevention of the commission of new offenses;
- Ensuring adequate legal protection for this category of persons, in accordance with the norms and requirements of a civilized society.

Without going into the details of each issue, it should be noted that the objectively necessary physical isolation of convicted persons must not lead to an absolute blockade of their social connections, as this could generate only negative consequences and may hinder the subsequent process of resocialization.

However, it is also important to note that persons sentenced to imprisonment have the right to transmit information only in the form of providing it (that is, they may transmit information to a specific person), but not in the form of dissemination (that is, to an unlimited circle of persons). This conclusion results from the content of the above-mentioned provisions of the Execution Code.

In our opinion, this restriction is necessary and does not violate the balance in the analyzed field, as it corresponds to the regime established in places of detention, associated with the objectively necessary isolation of convicted persons and with the prevention of the negative influence that certain groups of detainees may exert on society and on other citizens, including by preventing the preparation, planning, and commission of new offenses.

The exercise of the prerogative of access to information is also associated with a series of specific particularities determined by the need to ensure appropriate conditions of isolation in places of detention.

The creation of such conditions requires the administration of penitentiary institutions to exercise comprehensive control over any contacts of the convicted person, which is possible only if all means of communication that are insufficiently controllable,

especially laptops, tablets, and phones with access to the Internet network, are prohibited and confiscated.

On the other hand, offering convicted persons the possibility to regularly receive information about the most important events taking place in the country may have significant educational value and allows them to avoid losing connection with social life.

It should be noted that the detention regime in penitentiary institutions does not prevent convicted persons from carrying out creative activities, writing literary works, practicing visual arts, or engaging in other forms of expression. On the contrary, such activity is encouraged by the administration, as it represents a manifestation of the positive qualities and traits of the convicted person's personality.

The above considerations imply that this category of persons may create information that can potentially have social and material value, constituting an object of civil circulation. For this reason, the law must provide mechanisms and procedures through which convicted persons may exercise their right regarding the use of information.

Despite the arguments presented, adequate legal regulation of these processes is in fact lacking, the mentioned issue receiving insufficient attention in legal literature, while systematized scientific research on this topic is almost nonexistent.

The exercise by persons sentenced to imprisonment of the right to information and the related positive legal possibilities presents particularities determined by the legal status of this category of persons. The development of concrete possibilities that allow the convicted person to exercise the right to information and its related prerogatives contains significant potential for their correction and re-education, a potential that cannot be fully utilized without improving the legal framework of the analyzed field and without an appropriate organizational policy on the part of penitentiary administrations.

Thus, based on the above, the following characteristics of the right to information can be highlighted:

1. The analyzed right must be characterized as a complex right, composed of a set of prerogatives;

2. It has major political importance and represents one of the foundations of the democratic rule-of-law state;

3. It is derived from freedom of expression but currently has the status of a fundamental right;

4. It is a right recognized at the international level, enshrined in numerous international normative acts concerning human rights.

One of the main problems identified in the specialized doctrine consists in the discrepancy between the normative recognition of the right to information and its effective implementation in the penitentiary environment. Although the penitentiary enforcement legislation expressly enshrines this right, the practical mechanisms of implementation often remain merely formal.

Some authors address the issue from the perspective of the inefficiency of institutional mechanisms, indicating that „in the absence of independent information structures, the detainee remains exclusively dependent on the penitentiary administration, which creates a structural imbalance" [12, p. 91]. Others emphasize that incomplete or distorted information undermines the corrective purpose of punishment, since "resocialization presupposes awareness of legal rights and responsibilities" [13, p. 148].

Effective access to information implies not only passive information but also the possibility to consult relevant legislation, case law, and doctrine. In practice, penitentiary libraries are insufficiently equipped, and access to updated legal information is sporadic.

In this regard, it is emphasized that, in many penitentiary systems in Eastern Europe, the information provided to detainees is limited to the minimal communication of internal rules, without a clear explanation of their content and legal consequences. Thus, Boroi A. points out that "the rights of detainees are often proclaimed in abstract terms, without being accompanied by real instruments for their exercise" [7, p. 44]. It is also noted that access to information becomes illusory when the person does not have the real capacity to understand and make use of the information received [6, p. 189].

A major obstacle is the limited access to updated legislation and case law. According to a study published by Penal Reform International, the lack of legal information in detention directly affects the detainee's ability to challenge the legality of measures concerning him or her [14].

Reports by international NGOs, such as Amnesty International, highlight that detainees are not always effectively informed about complaint procedures [15]. This lack of information affects the effective nature of the right to an effective remedy guaranteed by Article 13 of the European Convention on Human Rights.

In this regard, the European Court of Human Rights has consistently held that the lack of access to relevant legal information may constitute an indirect violation of Articles 6 and 13 of the European Convention on Human Rights (case of Golder v. the United Kingdom, 1975) [16].

Furthermore, the reports of the European Committee for the Prevention of Torture (CPT) indicate that the information provided to detainees is often incomplete and formal. In the CPT Report regarding the Republic of Moldova (2020), it is stated that detainees are not always informed in a clear and accessible manner about their rights [17, para. 34].

Another critical aspect is the tendency of the penitentiary administration to justify restrictions regarding information by invoking general security reasons. Although security represents a legitimate aim, it cannot constitute a general and automatic argument. In this respect, the restriction of the fundamental rights of detainees must be interpreted restrictively and subjected to rigorous proportionality control.

Conclusions. The free exercise of the right to information by each participant in social relations within the penitentiary enforcement sphere, primarily by convicted persons, represents a basic condition for the effectiveness of public oversight, as it provides the possibility of obtaining the necessary information and exercising influence over state authorities.

At the same time, it is important to take into account that persons placed in places of detention have a limited scope of rights and freedoms, including informational rights, as this is necessary to ensure the detention regime and the achievement of the purposes of criminal punishment, within the limits that do not contradict Article 34 of the Constitution of the Republic of Moldova.

At the same time, the scope of rights and freedoms of each individual person depends directly on the type of penitentiary institution and on the legal status of the person in detention, respectively persons sentenced to imprisonment, suspects, accused persons, persons placed under administrative arrest, etc.

The detainee's right to information represents an essential guarantee of human dignity, of the legality of the execution of the sentence, and of social reintegration. The analysis carried out confirms that the main difficulties are not normative in nature, but rather institutional and practical.

The problems related to the implementation of the right to information and to public oversight over the penitentiary enforcement system are varied and concern a wide

spectrum of social relations. Considering the diversity of existing problems, deficiencies, and possible solutions – many of which have a particular character and concern distinct aspects of the right to information – it is necessary to highlight the main directions for the development of the analyzed right, as well as of public oversight as a whole:

- Improving the level of information provided to all categories of persons in places of detention, including ensuring their access to information regarding their rights and freedoms, the procedure and conditions for the execution of the sentence, and the penitentiary regime, as well as strengthening the legal liability of officials who violate these obligations;
- Aligning national practice with the standards developed by the European Court of Human Rights and international bodies;
- Training penitentiary staff regarding the respect for the right to information.

Bibliographical references

1. Declarația Universală nr. 12 din 10.12.1948 a Drepturilor Omului // https://www.legis.md/cautare/getResults?doc_id=115540&lang=ro (vizitat 03.03.2026).
2. Convenția nr. 342 din 04.11.1950 pentru apărarea drepturilor omului și a libertăților fundamentale // https://www.legis.md/cautare/getResults?doc_id=115582&lang=ro (vizitat 03.03.2026).
3. Pactul internațional nr. 31 din 16.12.1966 cu privire la drepturile civile și politice. //https://www.legis.md/cautare/getResults?doc_id=115567&lang=ro (vizitat 03.03.2026).
4. Constituția Republicii Moldova nr. 1 din 29.07.1994 // https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro# (vizitat 03.03.2026).
5. Dongoroz V., Explicații teoretice ale Codului penal român, vol. I, București, 1970, 684 p.
6. Muraru I., Tănăsescu E.S. Drept constituțional și instituții politice, vol. I, București, 2015, 640 p.
7. Boroi A., Drept penal. Partea generală, București, 2019, 584 p.
8. Costa J.P. La Convention européenne des droits de l'homme, Paris, 2010, 228 p.
9. Van Zyl Smit D. Taking Life Imprisonment Seriously, Oxford, 2002, 312 p.
10. Codul de executare al Republicii Moldova, // https://www.legis.md/cautare/getResults?doc_id=149721&lang=ro# (vizitat 04.03.2026).
11. Statutul executării pedepsei de către condamnați, aprobat prin Hotărârea Guvernului Republicii Moldova nr. 583 din 26.05.2006 // https://www.legis.md/cautare/getResults?doc_id=110142&lang=ro (vizitat 04.03.2026).
12. Селиверстов В.И. Права осужденных, Москва, 2012, 272 р.
13. Стручков Н.А. Уголовно-исполнительное право, Москва, 2005, 464 р.
14. Penal Reform International. Access to information in prisons // https://www.penalreform.org (vizitat 04.03.2026).
15. Amnesty International. Prisoners' rights and access to justice // https://www.amnesty.org (vizitat 04.03.2026).
16. Golder versus Regatul Unit al Marii Britanii şi Irlandei de Nord – Interceptarea corespondenţei. Încălcarea dreptului la asitenţă juridică // https://legeaz.net/hotarari-cedo/golder-contra-regatul-unit-hac (vizitat 05.03.2026).
17. Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 January to 7 February 2020 // https://ombudsman.md/en/post-document/report-to-the-government-of-the-republic-of-moldova-on-the-visit-to-the-republic-of-moldova-carried-out-by-the-european-committee-for-the-prevention-of-torture-and-inhuman-or-3/ (vizitat 05.03.2026).

CZU 343.344 **DOI: https://doi.org/10.5281/zenodo.20826014**

THE LEGAL OBJECT OF THE OFFENCE UNDER ARTICLE 290 OF THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA

Alexandru STOLEARENCO,
PhD Candidate,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0001-9484-0796

Valentin CHIRIȚA,
PhD, University Professor,
Department of Criminal Law and Criminology,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-7711-022X

Abstract

The analysis of the legal object of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova highlights the complexity of the social values protected through the criminalization of acts concerning the illicit circulation of firearms and ammunition. Although, traditionally, this offence is associated with the protection of public security and public order, an in-depth analysis reveals the multifaceted and complex nature of the legal object, determined by the diversity of the modalities of commission provided by the criminal norm.

Thus, in addition to the social relations concerning the legal regime of firearms, certain incriminated conducts, such as theft or illegal commercialization, may also affect the right to property as well as the health of the person, while the illicit use or handling of firearms and ammunition may generate direct risks to human life.

Therefore, in this context, the idea of a complex legal object emerges, within which the protected social values are not limited to public security, but also include other fundamental social relations, affected differently depending on the specific nature of the incriminated conduct.

Keywords: legal object, social value, security and public order.

OBIECTUL JURIDIC AL INFRACȚIUNII PREVĂZUTE LA ARTICOLUL 290 COD PENAL AL REPUBLICII MOLDOVA

Abstract

Analiza obiectului juridic al infracțiunii prevăzute la art. 290 Cod penal al Republicii Moldova evidențiază complexitatea valorilor sociale protejate prin incriminarea faptelor ce vizează circuitul ilegal al armelor și munițiilor. Deși în mod tradițional, această infracțiune este asociată protecției securității și ordinii publice, însă o examinare aprofundată relevă caracterul plurivalent și complex al obiectului juridic, determinat de diversitatea modalităților de comitere prevăzute de norma penală.

Astfel, pe lângă relațiile sociale privind regimul juridic al armelor, anumite conduite incriminate, precum sustragerea sau comercializarea ilegală, pot aduce atingere și dreptului de proprietate, precum și sănătății persoanei în timp ce utilizarea sau manipularea ilicită a armelor și munițiilor poate genera riscuri directe pentru viața acesteia.

Prin urmare, în acest context, se conturează ideea unui obiect juridic complex, în cadrul căruia valorile sociale protejate nu se limitează la securitatea publică, ci includ și alte relații sociale fundamentale, afectate în mod diferit în funcție de specificul conduitei incriminate.

Cuvintele-cheie: obiect juridic, valoare socială, securitate și ordine publică.

Introduction. In the context of the growing criminal phenomenon associated with the illicit circulation of firearms and ammunition, the criminal law analysis of the social values protected through the criminalization of such acts acquires particular relevance, especially in terms of determining the content of the legal object of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova (Hereinafter – CC RM). The importance of this analysis is determined not only by the central role that the legal object occupies in the structure of the offence, but also by the need to ensure a correct and uniform interpretation of the criminal norm in judicial practice.

Although, traditionally, the analysed offence is associated with the protection of public security and public order, such an approach proves to be insufficient in relation to the complexity of the criminal phenomenon regulated by the norm. The diversity of the modalities of commission provided by Article 290 CC of the Republic of Moldova, as well as the nature of the material object involved, determine the incidence of distinct social values that go beyond the strict framework of public security.

In this context, the need emerges for a re-examination of the concept of the legal object of this offence, by reference to the totality of protected social values, as well as to the concrete manner in which they are affected depending on the specific nature of the incriminated conduct, and such an approach allows for highlighting the complex nature of the offence and contributes to the development of a more coherent interpretative framework better adapted to current criminogenic realities.

Methods and materials applied. Within the present study, the classical methods of criminal law research were employed, in particular the logical-legal analysis method, which allowed for the examination of the normative content of the provisions of Article 290 of the Criminal Code of the Republic of Moldova, as well as the systemic method, used to highlight the place and role of the legal object within the structure of the offence. Furthermore, the comparative method was applied, by reference to the opinions expressed in national and international doctrine, as well as the interpretative method, necessary for clarifying the meaning and scope of application of the legal concepts analyzed.

Discussions and results obtained. Any offence, viewed as a manifestation of non-compliance with fundamental norms of social conduct and of hostility towards the rules of social coexistence, essentially constitutes an attack against a fundamental social value protected by the state through its mere criminalization within criminal legislation, given that through the conduct prohibited by law, the offender affects these social relations and, at the same time, causes harm to the fundamental values upon which they are based.

In specialized doctrine [30, p.79], the totality of social values and relations guaranteed by criminal law and infringed by the commission of unlawful conduct forms what is referred to as the legal object of the offence, which represents an indispensable element of the structure of the offence, serving as the criterion that justifies criminalization and outlines the purpose of criminal law protection.

Thus, speaking about the structure of the corpus delicti, it is defined as the organized set of elements that compose it and the interdependent relationships between them, reflecting the manner in which criminal liability is manifested, and according to the opinion of the scholar A. Borodac, the structural basis of the corpus delicti consists in the system of its features, which is composed of four groups of features that explain four corresponding elements of the offence: the features characterizing the object and the subject of the offence, as well as its objective and subjective side [2, p.54].

In criminal law doctrine, two distinct conceptions have developed over time regarding the legal nature of the object of the offence, each of them being grounded in a differ-

ent interpretation of the relationship between social values and the interests protected by the criminal norm.

Thus, as noted by the author A.A. Piontkovsky, considered one of the developers of the doctrine of criminality in Soviet criminal law, the object of any offence is not composed of all social values, but only of those protected by the criminal-law coercive apparatus, given that "the social relations of a socialist society constitute a common object that is ultimately infringed by any offence provided for by Soviet legislation" [37, p.129].

This position was subsequently supported by the majority of authors and became generally recognized both in the theory and practice of criminal law [33, p.134]. Human life in society exists in the form of social relations, and if we refer to the structure of a specific social relation, it consists of three elements: subjects (participants or parties to a social relation), an object (the thing or good in connection with which the relations exist), as well as a social link between the participants (the content of the relation).

Within this theory, the object of an offence may be considered either as a system of typical, stable social relations of a certain kind taken as a whole, or as an individual social relationship disrupted by a specific offence [21, p.57].

A similar view is expressed by the author S. Brînză, according to whom the object of the offence is constituted by social values and social relations that require criminal protection, in whose consolidation and development society is interested, and which may be substantially harmed by the antisocial behavior of certain individuals or groups of persons [6, p.35].

In contrast, other authors, such as A.V. Naumov, promote the conception according to which, in addition to social relations, the object of an offence is recognized as consisting of those benefits (interests) that are infringed by a criminal act and are protected by criminal law [32, p.38].

In this context, the author A. Zosim states that the notion of "interest" has a broader character than that of "social value", as it encompasses the latter [19, p.511] and more accurately reflects the legal reality of what is protected by criminal law and what effectively constitutes the target of criminal conduct.

Thus, in this sense, "interest" expresses not only the axiological dimension of the social value, but also its practical purpose, allowing for a more flexible and better-adapted approach to the concept of the object of the offence. Consequently, in support of the second conception, the Romanian authors R.M. Stănoiu, I. Criga, and T. Dianu have also argued that "social values are not formed in a vacuum, but around certain realities which are objectified in specific interests, given that in all incriminated forms there will always be a generally protected interest, which the incriminating norm protects indirectly, and a specifically protected interest, which the incriminating norm protects directly" [18].

This thesis closely resembles the conception of V. Dongoroz, who considers that the object of criminal law protection is the interest safeguarded by the incriminating norm, which in turn may be of two kinds: the specifically protected interest and the generally protected interest [6, p.35].

Therefore, we consider that the notion of "value" is more appropriate and more comprehensive for defining the legal object of the offence, as it captures both the axiological foundation and the practical dimension of the social relations protected by criminal law, thus providing the concept of the legal object with greater consistency and a more precise applicability in judicial practice.

At the same time, unlike the notion of "interest", the concept of social value is not limited to an abstract or purely declarative dimension, but organically integrates the prac-

tical dimension of the social relations protected by criminal law, so that the social value manifests itself concretely within determined social relations and is capable of being infringed by criminal conduct, which allows for a clear identification of the legal object and its delimitation in the process of legal qualification of the act.

Furthermore, the use of the notion of "social value" provides the concept of the legal object with stability and coherence, avoiding the risk of excessive relativization of criminal protection, whereas the notion of "interest" is, by its nature, much more flexible and susceptible to subjective interpretations, as it may vary depending on the individual perceptions of the offender or the victim, given that what constitutes a major interest for one person may be irrelevant for another, and such variability risks affecting the objective, general, and impersonal character of the criminal norm.

Thus, criminal law, by its very nature, cannot be grounded on fluctuating criteria or on individual perceptions, but must relate to generally recognized social values, established and enshrined by law, and it is precisely this generality and objectivity of social values that justifies their use as a defining element of the legal object of the offence, ensuring the uniform application of criminal law and the predictability of criminal liability.

Therefore, criminal law doctrine [11, p.676; 35, p.163; 29, p.17] says consistently outlined a dual structure of the object of the offence, distinguishing between two categories of objects:

- *The legal object*: represents the immaterial, intangible dimension of the interests, values, and social relations protected, whose existence and functionality are threatened or effectively harmed by the criminal act or omission, which in turn is subdivided into the general legal object, the generic legal object, and the specific legal object, the latter being further divided, where appropriate, into the basic (primary) and the optional (secondary) legal object;

- *The material object*: designates the concrete support upon which the illicit conduct is exercised directly or indirectly, namely goods, things, the human body, animals, or other material or immaterial entities, through which the protected values and social relations are harmed or endangered.

Therefore, if we accept that the legal object of the offence, understood as the object of the unlawful encroachment, consists of the totality of social values protected by criminal law whose existence or functioning is endangered by the commission of the incriminated act, it becomes necessary to clarify the nature of these values and the manner in which the legislator has enshrined them normatively.

In this context, the national legislator has expressly established, in Article 2 of the Criminal Code of the Republic of Moldova, the scope of the fundamental values subject to criminal protection, providing that "criminal law protects, against offences, the person, his or her rights and freedoms, property, the environment, the constitutional order, the sovereignty, independence and territorial integrity of the Republic of Moldova, the peace and security of mankind, as well as the entire legal order" [10].

Therefore, among the criminal law provisions that establish and ensure the protection of public security, public order, and, more broadly, the entire legal order, a distinct place is occupied by the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova. This incriminating norm establishes criminal liability for a series of unlawful conducts falling within the notion of "illegal handling of weapons", namely: carrying, possession, acquisition, manufacturing, repair, modification of construction or marking, as well as the illegal commercialization of firearms or ammunition and their essential components, to which the hypothesis of their theft is also added.

In turn, from the content of the aforementioned article, the general legal object (common to all offences) may also be deduced, namely the totality of the fundamental values of society, towards which criminal conduct is directed and which, by their very essence, require special protection by criminal law [31, p.92].

The generic (or group) legal object, as a component part of the general legal object, represents a set of homogeneous, interdependent, and complementary social values toward which the unlawful conduct provided for by a specific group of criminal law provisions is directed.

In specialized literature, the generic legal object is regarded as the intermediate level of criminal law protection, situated between the abstract and universal dimension of the general legal object and the concrete, particular form of the specific legal object.

According to the view of the Russian author V.Yu. Shevchenko, the generic object represents the common legal value that unites a group of similar offences and constitutes the basis for the codification and classification of the provisions contained in the Special Part of the Criminal Code into separate sections [41, p.17].

Based on this theoretical premise, the identification of the generic legal object of an offence is generally carried out by reference to the placement of the incriminating norm within the structure of the Special Part of the Criminal Code. In the case of national criminal legislation, Article 290 of the CC of RM is situated in Chapter XIII – "Offences against public security and public order", which allows the conclusion that the generic legal object of this offence consists of the social values relating to the maintenance of public security and public order as fundamental social values, existing in a relationship of functional and conceptual interdependence, each having its own existence while at the same time supporting one another in the realization of the legal order.

This fact therefore expresses, on the one hand, the general state of protection of society against dangers that could threaten life, bodily integrity, or the safety of the community, and, on the other hand, the set of rules of social coexistence that ensure the harmonious functioning of the community and the respect for the authority of the law.

Following the clarification of the theoretical premises outlined above, emphasis will be placed on an in-depth examination of the notions of "public security" and "public order", given that these concepts occupy a distinct place within the framework of the general theory of criminal law, as they are characterized by a high degree of abstraction and are also considered among the most complex and difficult categories used by the legislator in determining the object of the offence.

Precisely because of this conceptual nature, the issue of defining and delimiting the criminal-law content continues to generate doctrinal debates, the author V. Chiriță rightly stating that public security is a complex social category for which no unified conception has yet been developed, one that would be necessary for a complete and unanimously accepted determination of its essential elements as social values protected through criminal incriminations.

In this context, criminal law doctrine has devoted significant efforts to conceptualizing these notions, with numerous authors attempting to capture the essential dimensions of public security and public order, among whom the Russian author A.V. Gotovtsev considers that public order essentially reflects the protection of personal safety, while public security has a broader scope, encompassing not only the safeguarding of physical integrity, but also the protection of property and the ensuring of the proper functioning of sources of increased danger [24, p.23].

According to P.V. Zamoskovtsev, public safety, as a complex object of the offence, is

based on a unified need and interest to maintain public safety, where the objects of this interest are human life, health, and property [26, p.3].

In turn, A. Borodac defines public security as a normative system intended to protect the most important values of the individual, the material and spiritual values of society, the authority of official power, as well as the sovereignty and territorial integrity of the country [4, p.399].

A similar notion is also proposed by the authors A. Barbăneagră, Gh. Alecu, V. Berliba, et al., according to whom public security is an element of public order and represents a system of social relations that ensures the safety of citizens' life and health, as well as the prevention of material damage or other serious consequences in the process of using sources of increased social danger [1, p.643].

In a related approach, S. Brînza and V. Stati define public security through the prism of a factual state, emphasizing that it is reflected in the existence of a stable social order, free from major risks and disturbances that could endanger the normal functioning of society, and that when criminal law incriminates certain acts that affect public security, it reacts against a danger capable of producing collective effects, namely affecting the interests of an indeterminate, more or less significant, number of individuals [7, p.517].

The extensive analysis found in specialized literature is explained by the absence of a precise legal definition of the term "public security" in national law, given that the legislator has established through normative acts only the notion of "national security", defined as the totality of actions and measures undertaken to ensure the existence, stability, and sustainable development of the Republic of Moldova by protecting the sovereignty, independence, and unity of the state, the territorial integrity of the country, national values and interests, as well as fundamental rights and freedoms from threats and dangers, whether internal or external, of any nature [15].

Thus, it is established that public security, viewed as a set of fundamental social values, relations, and conditions protected by criminal law, ensures the existence of a state of stability, legality, and collective protection against major social dangers, expressing not only the safeguarding of life, bodily integrity, and the health of citizens, but also the protection of property, the proper functioning of sources of increased danger, the respect for the authority of the law, the maintenance of civil peace, and the defense of state sovereignty.

Thus, although at first glance public security appears to be a relatively well-regulated and defined legal institution, the precise delineation of its content and its relation to the concept of "public order" raises major theoretical and practical difficulties. This problem arises from the fact that the two notions are closely interdependent, yet at the same time retain certain distinctive features, which necessitates a separate analysis of each.

Public order, in a legal sense, is defined as a state of legality, balance, and social peace, through which public security and the safety of the individual, communities, and property are ensured, as well as public health and morality, and which allows for the exercise of fundamental rights and freedoms and the effective functioning of institutions within a rule-of-law state [13].

A similar notion is found in Russian doctrine, where, according to L.D. Gaukhman, "public order is a set of relations that determine the atmosphere of order and public tranquility in public places, ensuring the decent behavior of citizens therein, the normal functioning of public institutions and organizations, as well as the physical and moral integrity of the individual in the public sphere" [23, p.34].

V.S. Komissarov considers public security as a set of social relations that not only

regulate safe living conditions for society, but also maintain a sufficient level of security for its normal functioning [28].

The same ideas are supported by K.S. Belsky, who considers that "public order, as a political and legal category, signifies the well-being and organization of society as a whole, encompassing all spheres of social relations, the sustainability and stability of socio-economic institutions, and their orientation toward harmonizing social ties and optimizing social development on the basis of the social regulators used in society" [22, p.85].

The Russian author A.S. Pivovarov understands public order as "an important element of the legal framework for the life of citizens, including a system of social relations that arises and develops in the process of interaction among its participants, primarily in public places, and is regulated by legal and other social norms, the observance of which ensures the personal and public safety of individuals, as well as an atmosphere of calm, coherence, and regularity in public life" [36, p.54].

Ultimately, it can be concluded that public order should be understood as an organized set of normatively regulated social relations that ensure the maintenance of a climate of peace and stability in community life, guaranteeing the normal and balanced functioning of public authorities, state and public institutions, as well as the observance of rules of social conduct by citizens in all spheres of social life.

These doctrinal interpretations, although differing in emphasis and purpose, converge towards the common idea enshrined in national normative acts, according to which public order and public security represent a state of legality, stability, and civil peace ensured by public authorities and institutions that implement preventive and coercive measures to combat unlawful acts, protecting life and personal integrity, fundamental rights and freedoms, as well as property and public health, while maintaining public safety, ensuring respect for the law, and guaranteeing the efficient functioning of public authorities and institutions [15].

Thus, the comparative analysis of all definitions established in doctrine, corroborated with the relevant legal provisions, leads to the conclusion that, due to the high degree of social danger involved in the illegal handling of weapons, the commission of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova simultaneously affects both public order and public security.

In this regard, offences of illegal handling of weapons should not be viewed merely as simple acts endangering immediate safety, but also as structural threats to social order, as they undermine the general sense of security, generate a state of collective insecurity, and affect citizens' trust in the ability of authorities to guarantee legal and social stability, which is why we support the position of the national legislator to incriminate the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova within the chapter dedicated to the protection of public security and public order.

Thus, insofar as the generic legal object of the offence results from the very title of the chapter that brings together the homogeneous social values and relations analyzed above, our attention turns to the immediate (or specific) legal object of the offence concerning the carrying, possession, acquisition, manufacturing, repair, modification of construction or marking, or the illegal commercialization of firearms or ammunition, their essential components, as well as their theft.

According to doctrine, the immediate legal object is understood as the social value against which the offender has acted [3, p.114], being rightly considered an essential element of every offence, thus having particular practical importance for the correct legal qualification of offences, as it allows for the individualization of a harmful act within a

group of offences, in other words, it enables the systematization of the offences within a chapter into a subsystem, namely of unlawful acts grouped under a similar generic legal object.

Thus, V.V. Bashilov considers that the direct object of the analysed offence is security in the sphere of the circulation of firearms, their main components, ammunition, explosives, and explosive devices [20, p.229], while the author S.U. Dikaev considers that it consists of "a set of relations that ensure public security against possible attacks through the illegal handling of weapons" [25, p.88].

A different view is expressed by A.N. Pavliuhin, who considers that the specific legal object of offences related to the illegal acquisition, transfer, sale, storage, transport, or carrying of firearms, their primary components, or ammunition is the safety of the population against the use, functioning, and effects of these objects [34, p.31], viewed as a specific domain of public security, consisting of the totality of social relations aimed at ensuring the safety of life and health of persons, compliance with the rules establishing the procedure for the acquisition, transfer, sale, storage, transport, or carrying of firearms, their primary components, or ammunition, intended to prevent their use in the commission of offences or accidents during their handling, and to guarantee the use of these objects in accordance with their intended purpose, exclusively for socially beneficial purposes.

In support of the above-mentioned author's view, the author O.A. Safonov also states that the immediate legal object is public security in the sphere of the circulation of firearms, ammunition, explosives, and explosive devices, while, according to the Russian author V.E. Stepenko, the immediate legal object of the offence is the ensuring of a state of protection of individuals and society against threats related to the illegal handling of weapons, devices, and dangerous substances specified by law [39, p.139].

A doctrinal view open to criticism is that expressed by S.U. Dikaev, who considers that the immediate legal object of the analysed offence consists of "a set of relations that ensure public security against possible violations through the illegal handling of weapons" [25, p.88].

Although this definition partially captures the essence of the protected social values, we consider it to be inaccurate and limited, as it reduces the scope of protection of the criminal norm solely to the preventive aspect of a potential endangerment of public security, whereas, in reality, the provision of Article 290 of the Criminal Code of the Republic of Moldova does not have merely the role of preventing the potential consequences of illegal handling of weapons, but substantially aims at the effective protection of public security as a complex legal value manifested in all spheres of social life, namely from public order and collective safety to the protection of life, bodily integrity, and the property of citizens.

According to Romanian doctrine, namely in the view of the authors V. Dongoroz, S. Kahane, I. Oancea et al., the specific legal object of the offence of non-compliance with the regime of weapons and ammunition, corresponding to the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova, has a particularly complex and extensive content. It consists of the totality of social relations whose protection is ensured through the safeguarding of a complex of social values: public order, social security, life and bodily integrity of the person, public and private property, such protection being achieved through the regulation of activities relating to weapons and ammunition [12, p.291].

In national specialized literature, namely in the view of the author A. Barbăneagră

[1, p.643], in line with the doctrinal opinions expressed by S. Brînza and X. Ulianovschi, analyzing the offence in question, it is stated that the specific legal object of the offence of illegal carrying, possession, acquisition, manufacturing, repair, or commercialization of firearms and ammunition consists of the social relations concerning public security in the field of the circulation of firearms and their component parts, as well as in the field of the circulation of ammunition [5, p.563].

Based on the doctrinal analysis carried out and the corroboration of the opinions expressed in national and foreign specialized literature, we consider that the specific legal object of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova consists of the totality of social relations that ensure the protection and safeguarding of public security in the sphere of the circulation of firearms, their essential components, and ammunition, as an essential element of public order and collective safety, this legal object expressing the fundamental social interest in maintaining strict and lawful control over the regime of weapons, in order to prevent any form of illegal handling, use, or commercialization that could endanger life, bodily integrity, or the property of individuals.

The analysis of the specific legal object of the offence provided for in Article 290 CC of the Republic of Moldova highlights the fact that the criminal norm is aimed at protecting a complex of values and social relations, primarily subsumed under the idea of public security in the sphere of the circulation of firearms, their essential components, and ammunition.

At the same time, the delimitation of the specific legal object does not exhaust the analysis of the object of the offence in its entirety, since it captures only the general category of social relations that the criminal norm seeks to protect. In reality, any offence manifests itself through a concrete encroachment upon certain specific social relations, which can be identified and analyzed only by reference to the particular factual situation in which the act is committed. From this perspective, there arises the need for a more in-depth analysis, moving from the general level of criminal-law protection to the level of the social relations actually harmed.

As a rule, each offence is characterized by the existence of a single specific legal object determined by the main social value whose protection the criminal norm is oriented toward, although both doctrine and judicial practice reveal the existence of particular situations in which, through the commission of a single offence, several distinct social values are simultaneously affected. Under these conditions, specialized literature has outlined the classification of the specific legal object into several categories, conferring upon it a complex and multi-layered character.

Thus, a distinction is made between the primary specific legal object, consisting of the social value whose impairment is inevitable and consistently present in every typical act, and the optional (or secondary) specific legal object, represented by the social value that is not affected in all cases of the commission of the offence, but which may be harmed in certain concrete situations, depending on the factual circumstances of the act.

In relation to this distinction, the question arises regarding the identification of additional social values that may be harmed through the commission of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova, and in this regard, two relevant doctrinal approaches may be noted.

Thus, the Ukrainian author E.L. Strelțova, analyzing the corresponding provision in Article 263 of the Criminal Code of Ukraine, similar to Article 290 of the Criminal Code of the Republic of Moldova, which regulates criminal liability for the "illegal handling of

weapons, ammunition or explosives", concludes that the secondary specific legal object of the mentioned offence consists of the life and health of persons" [40, p.873] given the intrinsic danger associated with the unauthorized circulation of weapons.

This view has, however, been criticized by the author A. Serbinov, who emphasized that "through the commission of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova, the encroachment is directed against social relations deriving from public security, as a sui generis social value, while the life and health of persons are not in an organic derivation with public security" [16, p.212].

From our perspective, both views may be considered partially incomplete, given that the criminal provision of Article 290 CC of the Republic of Moldova, although it does not directly target the impairment of human life, may nevertheless, in certain situations, affect the social value represented by the health of the person, especially in cases where the offence manifests itself in the form of theft of weapons, which may be carried out through the use of physical and/or psychological violence, as in the case of robbery, namely the open taking of property by using violence that is not dangerous to the life or health of the person.

Therefore, we find that the secondary specific legal object of the offence of theft of weapons has a complex character, as its commission simultaneously affects the right to property and, in certain situations, the health or bodily integrity of the person.

In continuation of the analysis, we will examine in detail the factual modality of the offence provided for in Article 290 of the Criminal Code of the Republic of Moldova, namely the theft of firearms, their essential components, or ammunition, taking into account its specificity as a distinct form of manifestation of the objective side of the offence. In this context, our attention will focus on the legal object of the encroachment characteristic of this factual modality, as the theft of weapons involves a heightened degree of social danger, simultaneously affecting multiple values protected by criminal law.

In Russian specialized literature, the authors O.A. Safonov, D.N. Fartukov, and D.S. Chukin, analyzing the elements of the offence provided for in Article 226 of the Criminal Code of the Russian Federation, which establishes criminal liability for the theft or extortion of weapons, ammunition, explosives, and explosive devices, indicate that the primary specific legal object is public security in the field of firearms, ammunition, explosives, and explosive devices, as well as weapons of mass destruction, materials, or equipment that may be used for their manufacture, while the secondary or additional specific legal object is property and human health [38, p.116].

A similar view is also shared by the Russian author L.V. Ivanova, according to whom the primary specific legal object of the aforementioned offence consists of the social relations ensuring public security, namely the totality of social relations that provide safe living conditions for each member of society, public order, and the security of the individual, society, or the state, while the secondary (immediate) specific legal object consists of the social relations ensuring public security and property relations in the sphere of the circulation and control of firearms, ammunition, explosives, and explosive devices, as well as the health of the individual [27, p.15].

We fully support the doctrinal orientation expressed by the cited authors and consequently reject the restrictive interpretation that would limit the secondary specific legal object of theft to social relations concerning exclusively the possession of firearms, their component parts, or ammunition. This approach appears insufficient from two converging perspectives. On the one hand, even though the text of Article 290 of the Criminal Code of the Republic of Moldova does not contain an explicit enumeration of the modal-

ities of committing theft (e.g., theft, robbery, armed robbery, extortion, or other forms of offences), the spirit and meaning of the provision cannot be interpreted mechanically as a protection limited to property, and on the other hand, the definition provided by the legislator, according to which "the theft of firearms, ammunition, or explosive substances shall be understood as such unlawful actions aimed at their appropriation through various methods: theft, robbery, armed robbery, extortion, acts of banditry, etc" [14], clearly shows that the admissible factual modalities frequently involve the use of force or coercion.

For this reason, theft, considered in concreto, results in the simultaneous infringement of multiple legal values: on the one hand, the right of possession (through the patrimonial character of the object stolen), and on the other hand, the values relating to the bodily integrity of the person (when the theft is carried out through the use of violence or accompanied by the threat of such violence).

Therefore, reducing the secondary legal object to mere patrimonial protection overlooks the hybrid nature and the increased degree of social danger of this factual modality.

Conclusions. Finally, the correct and comprehensive interpretation of the provisions of Article 290 of the Criminal Code of the Republic of Moldova requires the recognition of the complex character of the secondary specific legal object, particularly in the case of theft, as it cannot be reduced exclusively to social relations concerning the possession and circulation of firearms and ammunition.

Thus, although these relations constitute the core of criminal law protection, the analysis shows that, depending on the specific modality of commission and the circumstances of the act, the sphere of affected social values legitimately extends to the health and bodily integrity of persons, as well as to other related social interests, and such an approach reflects the plurioffensive nature of the offence and allows for a more adequate understanding of the social danger it generates, while also justifying the application of a sanctioning regime proportionate to the complex degree of harmfulness of the act and contributing to ensuring a correct and coherent legal qualification in judicial practice.

Bibliographical references

1. Barbăneagră A., Alecu Gh., Berliba V. Codul penal al Republicii Moldova: Comentariu adnotat cu jurisprudența CEDO și a instanțelor naționale. Chișinău 2009, p.643.
2. Borodac A. Drept penal. Calificarea infracțiunilor. Chișinău: Editura „Știința", 1996, p.54.
3. Borodac A., Gherman M. Manual de drept penal. Partea generală pentru învățământul universitar. Chișinău 2005, p.114.
4. Borodac A. Manual de drept penal. Partea Specială, cu modificările și completările până la 22.04.2004. Chișinău: Tipografia Centrală, 2004, p.399.
5. Brânză S., Ulianivschi X., Stati V., ș.a. Drept Penal. Partea specială. Vol. II, Ediția a II-a, Chișinău 2005, p.563.
6. Brînza S. Obiectul infracțiunilor contra patrimoniului. Monografie. Chișinău, 2005, p.35.
7. Brînza S., Stati, V. Tratat de drept penal. Partea Specială. Vol. II. Chișinău: Tipografia Centrală, 2015, p.517.
8. Cazacicov A. Răspunderea penală pentru crearea sau conducerea unei organizații criminale. Teză de doctor în drept, Chișinău, 2021, p.139.
9. Chirița V. Luarea de ostatici (Analiza juridico-penală și criminologică). Chișinău. 2011, p.55.
10. Codul Penal al Republicii Moldova. În: Monitorul Oficial nr.72-74 din 14.04.2009, art. 195.

11. Dongoroz V. Explicații teoretice ale Codului penal român. Partea specială. Vol. III. București: Editura Academiei Republicii Socialiste România, 1971, p. 676.
12. Dongoroz V., Iosif F., Kahane S., ș.a. Explicații teoretice ale Codului penal român. Partea Specială. Vol. IV, ediția a II-a, București: ALL Beck, 2003, p.291.
13. Hotărârea Guvernului RM nr. 1206 din 02.11.2016 cu privire la Centrul Național de Coordonare Integrată a Acțiunilor de Ordine Publică. În: Monitorul Oficial nr.379-386 din 04.11.2016, art. 1303.
14. Hotărîrea Plenului Curții Supreme de Justiție a Republicii Moldova cu privire la practica judiciară în cauzele penale despre purtarea (portul), păstrarea (deținerea), transportarea, fabricarea, comercializarea ilegală, sustragerea armelor de foc, a munițiilor sau a substanțelor explozive, păstrarea neglijentă a armelor de foc și a munițiilor nr.31 din 09.11.1998.
15. Legea nr.249 din 10.07.2025 privind securitatea națională a Republicii Moldova În: Monitorul Oficial nr.463-466 din 04.09.2025, art. 627.
16. Serbinov A. Obiectul juridic al infracțiunilor prevăzute la art.290 și art. 291 CP RM. Studia Universitatis Moldaviae, nr.8(98), Chișinău, 2016, p.212.
17. Serbinov A. Răspunderea penală pentru infracțiunile contra securității publice exprimate în manipulări ilegale cu arme și muniții. Teză de doctor în drept, Chișinău, 2019, p.43.
18. Stănoiu R.M, Criga I, Dianu T. Drept penal. Partea generală. Note de curs. București, 1992.
19. Zosim Al., Hrytenko O. Abordarea noțiunii obiectului infracțiunii în doctrina penală actuală. În: Materialele conferinței „Pregătirea profesională a cadrelor pentru subdiviziunile Ministerului Afacerilor Interne și alte organe de drept”, Chișinău, 2020, p.511.
20. Башилов В.В. Борьба с организованными формами преступного оборота огнестрельного оружия, его основных частей, взрывчатых веществ и взрывных устройств (уголовно-правовой и криминологический аспекты) // Автореф. дисс. канд юр. наук. Москва, 2000, с. 229.
21. Бастрыкин А.И. Уголовное право России. Практический курс, Москва, 2021, с. 57.
22. Бельский К.С. Феноменология административного права. Смоленск, 1995, с. 85.
23. Гаухмана Л.Д., Максимова С.В. Уголовное право. Особенная часть. Санкт-Петербург, 1999, с. 34.
24. Готовцев А.В. Организационно-правовые вопросы взаимодействия милиции и внутренних войск в охране общественного порядка: Автореферат диссертации на соискание ученой степени кандидата юридических наук. Москва, 2000, с. 23.
25. Дикаев С.У. Незаконные приобретение, передача, сбыт, хранение, перевозка или ношение оружия, боеприпасов, взрывчатых веществ и взрывных устройств // Учебное пособие. - Уфа, 1998, с. 88.
26. Замосковцев П.В. О многообъектности преступных посягательств // Проблемы борьбы с преступностью: сб. науч. трудов. Омск. 1978. с. 3.
27. Иванова Л.В. Хищение и вымогательство огнестрельного оружия, боеприпасов, взрывчатых веществ и взрывных устройств, Автореферат диссертации на соискание ученой степени кандидата юридических наук. Санкт-Петербург, 2004, с. 15.
28. Комиссаров В.С. Полный курс уголовного права / Под редакцией А.И. Коробеева. Том ГУ. С.- Петербург, 2008.
29. Коргулев А.Г. Предмет преступления в современном уголовном праве: понятие, признаки, вопросы квалификации и законодательной регламентации, Автореферат диссертации на соискание ученой степени кандидата юридических наук.

Краснодар, 2021, с.17.
30. Кудрявцев В.Н. Общая теория квалификации преступлений. Москва: Юристm, 1999, с. 79.
31. Кудрявцев В.Н., Наумов А.В., Бородин С.В., и.д. Российское уголовное право. Часть Общая: Учебник, Москва, 1996, с. 92.
32. Наумов А.В. Уголовное право. Общая часть: курс лекций. М. : БЕК, 1996, с. 38.
33. Никифоров Б.С. Объект преступления по советскому уголовному праву. Москва, 1960, с. 134.
34. Павлухин А.Н., Скоропупов Ю.И., Эриашвили Н.Д. Уголовная ответственность за незаконный оборот оружия, взрывчатых веществ, взрывных устройств и меры предупреждения. Закон и право, Москва, 2017, с. 31.
35. Панченко П.Н. Исследование объекта и предмета преступления // Проблемы борьбы с преступностью: сб. науч. Трудов. Омск, 1979, с. 163.
36. Пивоваров А.С. Дискуссионные подходы к определению понятия «общественный порядок» // Рос. юстиция. 2013. № 3. с. 54.
37. Пионтковский А.А. Уголовное право РСФСР. Часть Общая. М., 1925, с. 129.
38. Сафонов О.А., Фартуков Д.Н., Чукин Д.С., Уголовное право российской федерации в вопросах и ответах. Учебное пособие. Саратов, 2025, с. 116.
39. Степенко В.Е. Уголовно-правовой аспект борьбы с преступлениями против общественной безопасности. Хабаровск Издательство ТОГУ, 2017, с. 139.
40. Стрельцова Е.Л. Уголовный кодекс Украины: Научно-практический комментарий. Харьков: Одиссей, 2008, с. 872.
41. Шевченко В.Ю. Актуальность проблемы определения объекта преступления. Юридические Науки, Номер 1 ВлГУ, 2014, с.17.

CZU 341.231.14:343.1 DOI: https://doi.org/10.5281/zenodo.20826114

ECHR STANDARDS ON THE DEFENCE AND REPRESENTATION OF LEGAL ENTITIES

Bogdan-Petru TANAS,
PhD student,
Criminal Investigation Officer Seconded,
Anti-Corruption Prosecutor's Office,
Republic of Moldova
ORCID: 0009-0005-4655-6703

Abstract

The article examines the standards of the European Court of Human Rights concerning the right to a fair trial for legal entities, with particular emphasis on defence and procedural representation in criminal matters. Although a legal entity has no physical existence and cannot participate directly in procedural acts, European case-law and modern national legislations recognise that it benefits, mutatis mutandis, from the essential guarantees of Article 6 of the European Convention on Human Rights. The study analyses the way in which these standards are reflected in the regulation of the Republic of Moldova, especially after the introduction of Article 521 into the Criminal Procedure Code and the extension of state guaranteed legal aid to legal entities.

At the same time, comparative solutions from France, Germany, the United States of America and Romania are examined in order to identify the mechanisms used to prevent conflicts of interest and to ensure an effective defence. The research shows that the right of defence of the legal entity cannot remain merely formal, but must be supported by clear procedural rules on the appointment of the representative, his or her replacement in cases of incompatibility, and the possibility of granting legal aid. In the end, it is concluded that ECHR standards require states not only to recognise, in the abstract, procedural guarantees for legal entities, but also to establish effective mechanisms capable of preventing a denial of defence in criminal cases.

Keywords: legal entity, ECHR, right of defence, procedural representation, fair trial, conflict of interests, criminal proceedings.

STANDARDELE CURȚII EUROPENE A DREPTURILOR OMULUI PRIVIND APĂRAREA ȘI REPREZENTAREA PERSOANELOR JURIDICE

Abstract

Articolul examinează standardele Curții Europene a Drepturilor Omului privind dreptul la un proces echitabil în privința persoanelor juridice, cu accent pe dimensiunea apărării și a reprezentării procesuale în materie penală. Deși persoana juridică nu posedă existență fizică și nu poate participa direct la actele procedurale, jurisprudența europeană și legislațiile naționale moderne recunosc că aceasta beneficiază, mutatis mutandis, de garanțiile esențiale ale art. 6 din Convenția Europeană a Drepturilor Omului. Studiul analizează modul în care aceste standarde se reflectă în reglementarea Republicii Moldova, în special după introducerea art. 521 în Codul de procedură penală și extinderea asistenței juridice garantate de stat pentru persoanele juridice.

Totodată, sunt examinate soluții comparative din Franța, Germania, Statele Unite ale Americii și România, în vederea identificării mecanismelor utilizate pentru prevenirea conflictelor de interese și asigurarea unei apărări efective. Cercetarea evidențiază că dreptul la apărare al persoanei juridice nu poate rămâne unul formal, ci trebuie susținut prin reguli procedurale clare privind desemnarea reprezentantului, înlocuirea acestuia în caz de incompatibilitate și posibilitatea acordării asistenței juridice. În final, se concluzionează că standardele CEDO impun statelor nu doar recunoașterea abstractă a garanțiilor procesuale pentru persoanele juridice, ci și instituirea unor mecanisme efective care să prevină denegarea de apărare în cauzele penale.

Cuvinte-cheie: persoană juridică, CEDO, drept la apărare, reprezentare procesuală, proces echitabil, conflict de interese, proces penal.

Introduction. The recognition of the criminal liability of the legal entity has naturally led to increased requirements concerning the protection of its procedural rights. Unlike the natural person, the legal entity cannot participate directly in criminal proceedings, cannot make statements in its own name and cannot exercise procedural rights personally. This particularity gives rise to the need for its representation by a natural person capable of expressing its procedural will and ensuring its defence.

At the conventional level, Article 6 of the European Convention on Human Rights enshrines the right to a fair trial, and the case-law of the European Court has extended the applicability of its essential guarantees to legal entities as well, insofar as such guarantees are compatible with their nature [1; 2]. Thus, access to justice, adversarial proceedings, equality of arms, a reasonable time and the presumption of innocence do not belong exclusively to natural persons, but also protect collective entities when they are involved in proceedings of a criminal nature [2; 3; 4].

The central issue, therefore, does not lie in the theoretical recognition of the rights of the legal entity, but in ensuring their effective exercise. In practice, the legal entity's right of defence may become illusory when its legal representative is involved in the same criminal case, when the entity refuses or omits to appoint a representative, or when the resources necessary to retain counsel are lacking. For precisely this reason, ECHR standards require states to adopt procedural mechanisms capable of removing conflicts of interest and ensuring the effective representation of the legal entity.

In the Republic of Moldova, this matter received clearer regulation after the adoption of Law No.1 of 6 February 2020, by which Article 521 was introduced into the Criminal Procedure Code and state guaranteed legal aid was extended to legal entities in certain situations [5; 6]. These new provisions are intended precisely to provide a procedural solution for cases in which the ordinary representation of the legal entity becomes impossible or incompatible with the requirements of a fair trial.

Methods and materials applied. The research is based on the use of the classical methods of legal science. First, the method of legal-normative analysis was applied through the examination of the provisions of the European Convention on Human Rights, the criminal procedural legislation of the Republic of Moldova and relevant regulations from comparative law [1; 5; 6; 8; 9; 10; 13]. This method made it possible to identify the rules structuring the defence and representation of the legal entity and to assess their compatibility with the requirements of Article 6 ECHR.

Second, the jurisprudential method was used by reference to judgments and interpretative documents relevant to the field of the fair trial, including the European Court's guide on Article 6 in criminal matters and case-law concerning collective entities [2; 3; 4]. This approach was necessary in order to highlight the concrete content of conventional standards and the manner of their application in the case of the legal entity.

Third, the research employed the comparative method by confronting the Moldovan model with the solutions regulated in France, Germany, the United States of America and Romania [8; 9; 10; 11; 13]. The purpose was to identify common elements and differences in regulation, as well as to draw conclusions useful for improving the national normative framework.

The documentary material used included normative acts, case-law, interpretative documents of the European Court and doctrinal works relevant to the right of defence and the representation of the legal entity in criminal proceedings [1]-[13].

Discussion and results obtained. I. ECHR standards on the defence of the legal entity in criminal proceedings. In the case-law of the European Court of Human Rights, the

idea has become firmly established that the notion of "everyone" in the Convention may also include legal entities when the nature of the right invoked permits such application. In criminal matters, this means that a legal entity may, in principle, invoke the requirements of a fair trial, including access to a court, adversarial proceedings, equality of arms and the examination of the case by an independent and impartial tribunal [1; 2].

The European Court's guide on Article 6 in criminal matters shows that procedural guarantees are not purely formal, but must be practical and effective [2]. In relation to the legal entity, this requirement presupposes the existence of a procedural mechanism through which the entity may participate usefully in the proceedings, state its position, challenge the accusations and benefit from adequate legal assistance. Since the legal entity does not act physically, the effectiveness of its rights depends directly on its representation.

In *Guisset v. France*, the Court analysed the applicability of the guarantees of Article 6 in sanctioning proceedings of a criminal nature, confirming that the requirements of a fair trial cannot be restricted merely through the formal classification of the proceedings under domestic law [3]. In the same logic, in Fortum Oil and Gas Oy v. Finland the possibility of a commercial company invoking the protection afforded by Article 6 and the related procedural guarantees was essentially accepted [4]. These landmarks confirm that the legal entity is not excluded from the sphere of conventional protection.

However, the application of Article 6 to legal entities is not identical to that carried out in respect of natural persons. Certain rights have, by their nature, a different content. For example, the right to remain silent and the privilege against self-incrimination have a distinct intensity in the case of collective entities, especially when pre-existing documents, accounting records or other materials expressing the activity of the company, rather than the psychological will of a natural person, are concerned [2; 12]. Therefore, ECHR standards must be interpreted in relation to the specific nature of the legal entity, without depriving its right to an effective defence of substance.

In this respect, one of the most important standards deriving from European case-law is the need to avoid conflicts of interest in representation. A person who is, at the same time, suspected or accused of the same act or of connected acts cannot credibly and loyally ensure the defence of the legal entity's interests. In such a situation, the entity's defence becomes merely formal and equality of arms is affected. Hence arises the positive obligation of the state to provide solutions for replacing the representative and, where appropriate, for ensuring legal assistance.

II. The Reflection of ECHR Standards in the Legislation of the Republic of Moldova. In the Republic of Moldova, Article 521 of the Criminal Procedure Code provides that the criminal investigation and trial of a case against a legal entity shall be carried out with the participation of its legal representative [5]. This rule is important not only because it recognises the necessity of representation, but also because it turns such presence into an indispensable procedural guarantee.

The Moldovan legislator has also regulated the situation of conflict of interest. If the criminal investigation or trial against the legal entity concerns the same act or connected acts also in relation to its legal representative, the legal entity is obliged, within a short time limit, to appoint another representative against whom no criminal proceedings are being conducted [5]. This solution is fully consistent with the standards of Article 6 ECHR, because it seeks to remove the risk of a defence compromised by divergent interests.

Moreover, the law establishes a subsidiary mechanism for the situation in which the legal entity does not appoint its representative. Upon the prosecutor's motion, the

investigating judge or the court may appoint a representative from among the persons managing the entity who are not targeted by the criminal proceedings [5]. Through this intervention, the state prevents procedural deadlock and reduces the danger that the lack of cooperation or organisational impossibility on the part of the legal entity may lead to a postponement of the proceedings or to their unfair conduct.

A further step, particularly relevant from the perspective of the right of defence, lies in the correlation between Article 521 CPC and Law No.198/2007 on state guaranteed legal aid. Through the amendments introduced, legal entities may, under certain conditions, benefit from the appointment of a lawyer from the state guaranteed legal aid system when there are no persons capable of representing them [6]. This solution offers a practical answer to the requirement of effective defence and brings national regulation closer to conventional standards.

The constitutional foundation of these developments can also be identified in Judgment No. 30 of 22 November 2018 of the Constitutional Court of the Republic of Moldova, which underlined that the legal entity's right of defence cannot be left unprotected where the appointment of a representative is impossible [7]. The Court highlighted the need for a fallback solution, thereby preparing the ground for the subsequent legislative amendments.

Therefore, the current Moldovan regulation reflects to a significant extent the ECHR standards concerning the defence of the legal entity. It establishes the compulsory participation of the representative, provides for his or her replacement in cases of conflict of interest and allows recourse to state guaranteed legal aid. From a practical perspective, however, further clarifications remain useful regarding the exact procedural status of the representative, the limits of his or her powers and the coordinated exercise of the defence together with the legal entity's lawyer.

III. Relevant Comparative Benchmarks. Comparative law confirms that the issue of the representation of the legal entity in criminal proceedings is common to several legal systems, even though the technical solutions differ.

In France, Article 706-43 of the Code de Procédure Pénale provides for the representation of the legal person by its legal representative and allows for the appointment of an agent where ordinary representation is not adequate [8]. The French model is important because of the emphasis it places on the continuity of representation and on judicial intervention where there is a risk of conflict of interest or the absence of a valid representative. In essence, French law recognises that the defence of the legal person cannot depend exclusively on the will of a person whose procedural situation may compromise the entity's interests.

In Germany, although there is no classic criminal liability of the legal entity in the sense known in other systems, the legislation allows the involvement of the entity in proceedings of a repressive nature, including through mechanisms such as pecuniary sanctions applied to associations and procedural participation in certain cases [9]. There, the legal entity may exercise procedural rights close to those of the accused, including through a representative and a lawyer. Even though the German system does not develop to the same extent an autonomous mechanism for the involuntary appointment of an independent representative, it confirms the need to recognise effective procedural guarantees for collective entities.

In the United States of America, corporations are mandatorily represented by lawyers, and judicial practice as well as internal investigation practice have developed special instruments for managing conflicts between the interests of the company and those of

employees or directors [10; 11]. Upjohn warnings serve precisely to clarify that the lawyer represents the corporate entity, not the natural persons interviewed during the investigation [11]. This practice illustrates, in a different manner, the same fundamental concern: the clear separation between the defence of the legal entity and the defence of the individual interests of the persons involved.

In Romania, Article 491(2) of the Criminal Procedure Code expressly regulates the situation in which criminal proceedings are also brought against the legal representative of the legal entity for the same act or for connected acts. In such cases, the legal entity must appoint an agent, and in the absence of such appointment, the agent is designated by the prosecutor, the preliminary chamber judge or the court from among authorised insolvency practitioners [13]. The Romanian solution is particularly relevant because it offers an express and technical regulation of the conflict of interest, which may constitute a useful benchmark for Moldovan law as well.

Comparative analysis shows that, beyond the diversity of legal systems, there is a common core of standards: the legal entity must have effective representation, conflicts of interest must be prevented, and the state must intervene when the internal mechanisms of the entity no longer ensure a real defence. This core is compatible with ECHR requirements and confirms the general direction of reforms in the Republic of Moldova.

IV. Persistent Issues and the Need to Strengthen the Normative Framework. Although the current framework of the Republic of Moldova represents real progress, the analysis shows that certain aspects may still be developed further. First, it would be useful to provide a clearer consecration of the rights and obligations of the representative of the legal entity, in a manner distinct from those of the representative of other participants in the proceedings. Such clarification would reduce practical uncertainties and strengthen the foreseeability of the rule.

Second, it would be appropriate to regulate more explicitly the relationship between the representative of the legal entity and its lawyer. In practice, expressing the entity's will and providing specialised legal assistance are distinct yet complementary functions. The absence of a clearer delineation may generate confusion regarding the competences of each.

Third, the experience of comparative law shows the usefulness of more explicit formulas for appointing an independent agent in cases of conflict of interest. Although Article 521 CPC already offers important solutions, the wording of a more detailed rule could contribute to the harmonisation of judicial practice and to the strengthening of the protection of the legal entity.

Finally, it must be underlined that the effectiveness of ECHR standards depends not only on the existence of the legal text, but also on its coherent application by criminal investigation bodies and courts. A rule allowing for the replacement of the representative, but applied formally or belatedly, does not satisfy the requirements of a fair trial. For this reason, the interpretation and application of domestic provisions must remain guided by the purpose of Article 6 ECHR: ensuring a real, not symbolic, defence.

Finally, the practical implications of ECHR standards are also reflected in the manner in which the powers of the prosecutor, the investigating judge and the trial court should be interpreted. These authorities cannot treat the issue of representation as a mere administrative formality, but must regard it as a condition of the legitimacy of criminal proceedings conducted against a legal entity. Comparative law points in the same direction: when the State intervenes to appoint a compatible proxy, to separate the interests of the company from those of its representative, or to ensure legal assistance, it

is not granting a procedural privilege, but implementing the minimum requirements of a fair trial [8; 10; 13].

At the same time, ECHR standards require that the defence of the legal entity be supported by specialised legal assistance whenever the complexity of the case so demands or whenever the entity's internal mechanisms can no longer ensure functional representation. In this respect, the correlation between Article 521 CPC and the rules on state guaranteed legal aid is of particular importance, because it offers a procedural remedy for situations in which the legal entity risks remaining without an authentic procedural voice. From this perspective, counsel is not an auxiliary element, but an essential guarantee of the effective nature of the defence [5; 6].

Consequently, whenever the legal representative is targeted in the same criminal case, is investigated for connected acts, or is in a situation affecting his or her procedural loyalty, the authorities must react promptly in order to prevent a violation of equality of arms. This requirement flows not only from the internal rules on appointing another representative, but also from the State's conventional obligation to organise the proceedings in a manner that allows the concrete exercise of procedural rights. In practice, this means the early identification of conflicts of interest and the immediate adoption of measures to replace the incompatible representative [2; 5; 7].

From a practical perspective, ECHR standards impose on criminal investigation bodies and courts a heightened duty of vigilance whenever a legal entity is involved in criminal proceedings. It is not sufficient merely to note, in a formal manner, that a legal representative exists; the authorities must verify whether the representation is real, effective and free from incompatibilities capable of undermining the right of defence. In the logic of Article 6 of the Convention, the defence becomes illusory when the entity is represented by a person whose procedural interests are opposed or competing with those of the legal entity [1; 2; 5].

V. Practical Implications of ECHR Standards for the Representation of Legal Entities in Criminal Proceedings. At the level of judicial practice, these requirements also call for the development of a uniform approach, including methodological guidance and consistent case-law on the application of Article 521 CPC. The earlier and more predictably the judicial authorities address questions of representation, the lower the risk of annulment of procedural acts, delays in the proceedings, and later allegations that the defence was merely apparent. Therefore, the effectiveness of ECHR standards depends not only on the existence of adequate norms, but also on their transformation into a stable procedural practice faithful to the requirements of a fair trial [2; 5; 13].

Moreover, ECHR standards encourage an approach oriented towards continuity of defence. In complex cases involving large volumes of documents, extensive economic activities, or several persons targeted simultaneously, the replacement of the representative should not produce a rupture in the legal entity's defence strategy. For this reason, the mechanisms for appointing a compatible representative and counsel must be applied sufficiently early so that the entity may preserve the institutional memory of the case and its capacity for procedural reaction [2; 6; 8; 10].

At the same time, effective representation has direct implications for the validity and usefulness of procedural acts carried out during the criminal investigation. The questioning of the representative, the communication of the accusation, the filing of motions, the waiver of certain requests, or the exercise of remedies must emanate from a person who legitimately expresses the procedural will of the entity. In the absence of this requirement, there is a risk that certain acts will later be challenged precisely because they were carried

out through an incompatible or insufficiently legitimised representative [1; 2; 5].

Another practical consequence concerns the need for express reasoning in procedural acts by which the conflict of interest is established and the replacement of the representative is ordered. A rigorous practice requires the prosecutor and the court to indicate not only the formal existence of a parallel procedural status, but also the concrete manner in which it may affect the representative's freedom of decision and the coherence of the legal entity's defence. Such reasoning is important both for procedural transparency and for subsequent judicial review of the lawfulness of the measure [2; 5; 7].

Conclusions. The standards of the European Court of Human Rights confirm that legal entities benefit, in criminal matters, from the fundamental guarantees of the right to a fair trial, insofar as these are compatible with the nature of collective entities. The right of defence of the legal entity cannot be conceived in the abstract, but must be supported by procedural mechanisms capable of enabling its effective participation in the proceedings.

In this context, procedural representation acquires a central role. When the legal representative is targeted in the same criminal case or when the legal entity cannot appoint a person capable of representing it, the risk that the defence will turn into a mere formality is obvious. For this reason, the standards derived from Article 6 ECHR impose on states the positive obligation to regulate fallback solutions capable of removing conflicts of interest and preventing a denial of defence.

The regulation of the Republic of Moldova, especially through Article 521 CPC and through the extension of state guaranteed legal aid, reflects these requirements to a considerable extent. It provides a clearer procedural mechanism than in the past and demonstrates the legislator's concern for ensuring an effective defence of the legal entity. At the same time, the comparative analysis reveals that the Moldovan model forms part of a broader European and international trend aimed at protecting procedural balance and the autonomy of the defence of collective entities.

Nevertheless, for full alignment with conventional standards, it remains necessary to improve certain aspects concerning the status of the representative, the delimitation of his or her powers vis-à-vis the lawyer, and the more detailed regulation of the appointment of an independent agent in cases of conflict of interest. Compliance with Article 6 ECHR in the criminal proceedings of the legal entity is not merely a theoretical requirement, but a practical condition for the legitimacy of the administration of justice.

Bibliographical references

1. Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950.
2. European Court of Human Rights. Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (criminal limb). Strasbourg, updated on 31.08.2022.
3. Guisset v. France, judgment of the European Court of Human Rights of 26 September 2000.
4. Fortum Oil and Gas Oy v. Finland. Decision of the European Court of Human Rights of 12 November 2002.
5. Criminal Procedure Code of the Republic of Moldova No.122-XV of 14 March 2003. In: Official Gazette of the Republic of Moldova, 2003, No.104-110.
6. Law on State Guaranteed Legal Aid No.198-XVI of 26 July 2007. In: Official Gazette of the Republic of Moldova, 2007, No.157-160.
7. Judgment of the Constitutional Court of the Republic of Moldova No.30 of 22 November 2018.

8. France. Code de Procédure Pénale, Art. 706-43.
9. FGS. Das Unternehmen in der strafrechtlichen Hauptverhandlung [online]. Available: https://www.fgs.de/news-and-insights/blog/detail/das-unternehmen-in-der-strafrechtlichen-hauptverhandlung (accessed 30.12.2025).
10. U.S. Department of Justice. Justice Manual, § 9-28.000 Principles of Federal Prosecution of Business Organizations [online]. Available: https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations (accessed 30.12.2025).
11. Kohn, Kohn & Colapinto LLP. Avoiding the Pitfalls of Internal Corporate Investigations: Proper Use of Upjohn Warnings [online]. Available: https://kkc.com/wp-content/uploads/2020/03/Avoiding-the-Pitfalls-of-Internal-Corporate-Investigations-Proper-Use-of-Upjohn-Warnings.pdf (accessed 30.12.2025).
12. Stănilă L. The right to remain silent in the case of the legal entity. In: Universul Juridic, 2020, No.11, pp. 55-79.
13. Criminal Procedure Code of Romania. Law No.135 of 1 July 2010, Art. 491(2). In: Official Gazette of Romania, 2010, No.486.

CZU 343.52 **DOI: https://doi.org/10.5281/zenodo.20826209**

ASPECTS REGARDING THE DELIMITATION BETWEEN THE OFFENCE OF FALSE IDENTITY AND IDENTITY THEFT

Dumitru TABACARU,
PhD Student,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0001-9940-1116

Andrei NASTAS,
PhD, Associate Professor,
Cross-Border Faculty, "Dunarea de Jos" University of Galati,
Romania
ORCID: 0000-0001-7317-769X

Abstract

The correct and effective application of the legal rules contained in the Special Part of the Criminal Code constitutes an essential condition for the administration of justice and for ensuring legality in the activity of law-enforcement bodies. The legal classification of antisocial acts presupposes not only a thorough knowledge of statutory provisions, but also a rigorous capacity to interpret and delimit them in relation to concrete situations arising in objective reality. In this context, the offence of false identity raises a series of theoretical and practical difficulties, particularly in light of its apparent similarities with the offence of identity theft.

Although at first sight the two notions appear to designate the same legal reality, a careful analysis reveals essential differences both in terms of their constituent elements and in terms of their regulation. The frequent confusion between these offences, including among legal practitioners, highlights the need for conceptual and normative clarification.

At the same time, it should be noted that, unlike identity theft, which is widely recognised in international practice and legislation, the offence of false identity does not benefit from uniform regulation from a comparative-law perspective. This difference further underscores the importance of doctrinal and legal analysis of the two institutions. Accordingly, the present study aims to draw a clear distinction between the offence of false identity and that of identity theft, by emphasising the particularities of each and contributing to a better understanding and application of the relevant criminal-law rules.

Keywords: false identity, identity, attribution of identity, fictitious identity, personal data, use of identity, identity theft, stolen identity.

ASPECTE PRIVIND DELIMITAREA INFRACȚIUNII DE FALS DE IDENTITATE ȘI A FURTULUI DE IDENTITATE

Abstract

Aplicarea corectă și eficientă a normelor juridice din Partea Specială a Codului penal constituie o condiție esențială pentru realizarea actului de justiție și pentru asigurarea legalității în activitatea organelor de drept. Încadrarea juridică a faptelor antisociale presupune nu doar o cunoaștere temeinică a dispozițiilor legale, ci și o capacitate riguroasă de interpretare și delimitare a acestora în raport cu situațiile concrete din realitatea obiectivă. În acest context, infracțiunea de fals de identitate ridică o serie de dificultăți teoretice și practice, în special prin prisma asemănărilor aparente cu infracțiunea de furt de identitate.

Deși la prima vedere cele două noțiuni par a desemna aceeași realitate juridică, o analiză atentă relevă

existența unor diferențe esențiale atât sub aspectul conținutului constitutiv, cât și al reglementării acestora. Confuzia frecventă între aceste infracțiuni, inclusiv în rândul practicienilor dreptului, evidențiază necesitatea unei clarificări conceptuale și normative.

Totodată, se remarcă faptul că, spre deosebire de furtul de identitate, consacrat pe scară largă în practica și legislația internațională, infracțiunea de fals de identitate nu beneficiază de o reglementare uniformă în plan comparat. Această diferență accentuează importanța analizei doctrinare și juridice a celor două instituții. Prin urmare, prezentul studiu își propune să realizeze o delimitare clară între infracțiunea de fals de identitate și cea de furt de identitate, evidențiind particularitățile fiecăreia și contribuind la o mai bună înțelegere și aplicare a normelor penale incidente.

Cuvinte-cheie: fals de identitate, identitate, atribuirea identității, identitate falsă, date cu caracter personal, folosirea identității, furt de identitate, identitate furată.

Introduction. The Republic of Moldova, as a State that has progressively aligned its legislation with European standards, has developed a regulatory framework intended to govern offences related to identity. This statement follows from the fact that, on 6 June 2024, the Parliament of the Republic of Moldova adopted Law No.136 on the amendment of certain normative acts (hereinafter Law No.136/2024), by which the Criminal Code was supplemented with two offences specifically concerning the security of personal data: Article 1771, "False identity", and Article 2607, "Identity theft" [1, Art. 1 items 38) and 102)]. The introduction of these provisions represents a landmark in the evolution of national criminal law, marking the transition from a fragmented and indirect regulation of phenomena concerning false identity and identity theft toward a distinct, clear and autonomous incrimination adapted to contemporary realities.

This legislative orientation reflects not only the need to align with international requirements, but also the increasing importance of protecting identity in the context of technological development and the intensification of risks associated with the use of personal data.

Concurrently, the legislature has demonstrated a firm intention to modernise the regulatory framework in the field of personal data protection. Thus, on 25 July 2024, Law No.195 on the protection of personal data (hereinafter Law No.195/2024) was adopted, transposing into national legislation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, known as the General Data Protection Regulation (GDPR), published in the Official Journal of the European Union L 119/1 of 4 May 2016. This law is due to enter into force on 23 August 2026, thereby consolidating the legal architecture for the protection of natural persons with regard to the processing of their personal data and ensuring the free movement of such data under conditions of security and transparency.

In this context, a progressive and coherent dynamic may be observed in the Republic of Moldova in the implementation of rules on the security of personal data, including by criminally sanctioning persons who unlawfully obtain and use the personal data of other persons. The legislature's decision to resort to the instrument of criminal law in order to combat such acts reflects an approach consistent with the fundamental principles of European criminal policy, according to which the applicable sanctions must be effective, proportionate and dissuasive, so as to discourage the commission of such acts and ensure real and effective protection of the fundamental rights of the person.

Discussions and results obtained. A first element distinguishing the offence of false identity from the offence of identity theft lies precisely in their systematic placement within the Special Part of the Criminal Code of the Republic of Moldova (hereinafter the CC RM), a placement which is not accidental, but rather reflects the deliberate choice of the legislature as to the social values that each incriminating norm seeks to protect.

Thus, the offence of false identity, provided for in Article 177[1] CC RM, was inserted by the legislature into Chapter V of the Special Part, entitled «Offences against political, labour and other constitutional rights of citizens» [2, Art. 177[1]]. The title of this chapter unequivocally indicates that the generic legal object of the offences regulated therein consists of social relations concerning the exercise of citizens' constitutional rights.

By contrast, the offence of identity theft, provided for in Article 260[7] CC RM, was placed by the legislature in Chapter XI of the Special Part, devoted to «Computer-related offences and offences in the field of electronic communications» [2, Art. 260[7]]. The title of this chapter accordingly reveals that the generic legal object of the offence of identity theft consists of social relations in the field of information technology and electronic communications, which gives this act a distinct legal nature, circumscribed to the sphere of cybercrime.

At the same time, it should be noted that identity theft belongs to the category of computer-related offences that impair the security of another person's identity, from which it follows that the subgroup legal object of this offence consists of social relations concerning the security of a person's identity in the electronic environment.

At first reading, both the offence of false identity and the offence of identity theft directly concern the identity of another person, which could lead to the conclusion that both offences share the same special legal object. This apparent convergence requires an in-depth analysis intended to clarify the distinct nature and content of the social values protected by each incriminating norm.

In order to elucidate this issue, it is necessary to look back at the arguments underlying the supplementation of the Criminal Code with these two provisions through the adoption of Law No.136/2024. Thus, according to the arguments submitted by the authors of one of the draft laws that formed the basis of this law, in support of the incrimination of false identity under Article 177[1] CC RM, it was stated that: «Through the prism of the incriminating norms under discussion, an attack is made upon the identity of the person, which is complemented by the right to private life provided for in Article 28 of the Constitution. In the same context, it was specified that, in the interpretative literature concerning the International Covenant on Civil and Political Rights, the notion of intimate and private life covers several essential aspects of human existence and autonomy, among which identity is expressly included. The latter is understood as a sphere of individual existence that presupposes the protection of life, physical and mental integrity, freedom of conscience and thought, as well as recognition of legal personality. The protection of private life also includes the safeguarding of the individual qualities of human existence, the manner in which a person manifests himself or herself and his or her identity, embodied, for example, in the name» [3, item 104].

Complementing these arguments, the provisions of Law No.195/2024, namely Article 1 paragraph (2), show that the purpose of this law is to ensure the protection of the fundamental rights and freedoms of natural persons and, in particular, the right to intimate, family and private life in connection with the processing of personal data [4, Art. 1]. At the same time, the definition of personal data laid down in Article 4 of the same law, in full concordance with Article 4 point 1) GDPR, indicates that such data means any information relating to an identified or identifiable natural person, by reference to elements such as a name, an identification number, location data, an online identifier or factors specific to his or her physical, physiological, genetic, mental, economic, cultural or social identity [4, Art. 4; 5, Art. 4].

Consequently, it may be observed that personal data are closely connected with the identity of the person, which makes it possible, on the basis of this correlation, to delimit

the special legal object of each of the offences under analysis.

From a constitutional perspective, it should be emphasised that the name, as a fundamental attribute for identifying a person, is not expressly provided for in the Supreme Law of the Republic of Moldova as a self-standing constitutional right. Nevertheless, it is protected within the sphere of the right enshrined in Article 28 of the Constitution of the Republic of Moldova, according to which the State shall respect and protect intimate, family and private life.

Accordingly, the special legal object of the offence provided for in Article 177[1] CC RM consists of social relations concerning the exercise, in accordance with Article 28 of the Constitution, of the right to intimate, family and private life, in terms of the public trust placed in findings concerning the identity of persons.

Thus, the specific social value protected through the incrimination of false identity is public trust in the identification of persons and in their real identity. In other words, the norm in Article 177[1] CC RM sanctions infringements of the credibility and authenticity of person-identification processes, ultimately protecting each individual's right to preserve intact and unaltered the identity attributed to him or her in relation to third parties or public authorities, so that no person may be falsely identified or have an identity other than the real one attributed to him or her.

By analogy, it might be argued, *a pari*, that the special legal object of the offence of identity theft would also be social relations concerning the protection of intimate, family and private life, in terms of the public trust placed in findings regarding the identity of persons, similarly to the offence provided for in Article 177[1] CC RM. Such a conclusion would, however, be erroneous and incompatible with the fundamental principles of criminal law.

A fortiori, it is not possible for two different offences to have the same special legal object, even if they are placed in the same chapter of the criminal law or are provided for in the same article or paragraph. Certain details and particularities, even apparently insignificant ones, will always make it possible to distinguish the special legal object of one offence from that of another offence, precisely because each incriminating norm seeks to protect a distinct social value [6, p.37].

Therefore, starting from the placement of the norm in Chapter XI of the Special Part of the CC RM, as well as from the constituent content of the incriminated act, the special legal object of the offence of identity theft is formed by social relations concerning the security of another person's identity, in terms of ensuring the inaccessibility of that identity in an electronic communication, in the absence of the unvitiated consent of its holder [7, p.37].

This delimitation highlights the computer-related and electronic dimension specific to the offence of identity theft, which differs fundamentally from false identity by the manner in which the protected social value is impaired: whereas false identity concerns public trust in the processes for identifying a person, identity theft concerns the security and inaccessibility of identity data in the electronic environment.

With regard to the immaterial object of the two offences, it is found that, in both cases, it is represented by the identity of the person, which constitutes a genuine similarity between the two antisocial acts, beyond their structural differences.

As regards the category of persons whose identities may form the object of these offences, doctrine has provided important clarifications. The authors S. Brînza and V. Stati, in a study devoted to the offence of false identity, specified that, although in a broad sense one may also speak of the identity of a legal person - as follows, for example, from Article 10 paragraph (2) point 4) of Law No.124 of 19 May 2022 on electronic identification

and trust services - only a natural person may be the victim of the offence provided for in Article 177[1] CC RM. This follows from the nature of the provisions in Chapter V of the Special Part of the CC RM, which protect exclusively the constitutional rights of citizens, that is, of natural persons, and not subjective rights in general [8, p.31; 9, Art. 10].

With respect to the offence of identity theft, the same authors have emphasised that, unlike Article 177[1] CC RM, the norm in Article 260[7] CC RM does not form part of a chapter of the criminal law in which acts directed exclusively against natural persons are incriminated. Moreover, according to the definition formulated by the Organisation for Economic Co-operation and Development (OECD), "identity theft occurs when someone obtains, transfers, possesses or uses personal information about a natural or legal person without permission, with the aim of committing fraud or other crimes" [7, p.37].

Nevertheless, from a systematic interpretation of Article 260[7] CC RM it follows that the identity targeted by the incriminating norm is exclusively that of a natural person and does not extend to a legal person. This conclusion is required by the fact that, according to the legal text, the user of the computer system is induced by the perpetrator to provide "personal data within an electronic communication", while the notion of personal data, as presented earlier in this paper, refers exclusively to information relating to an identified or identifiable natural person. Therefore, it does not follow from the normative content of Law No.195/2024 that such a legal regime would also be applicable to a legal person [7, p.37].

In the same vein, the national scholars S. Brinza and V. Stati have noted that a legal person does not hold personal data within the meaning of Article 260[7] CC RM, but only identification data, such as its name, tax code or registered office, which do not benefit from the specific legal regime of personal data and, therefore, are not protected by the norm under analysis [7, p.37].

By corroborating these doctrinal and normative arguments, a second similarity between the offence of false identity and the offence of identity theft becomes apparent: in both cases, a legal person cannot have the status of victim, the circle of injured persons being limited, expressly or implicitly, to natural persons.

The objective element is one of the most important elements of the constituent content of any offence, since it describes the external manifestation of criminal conduct, namely the concrete manner in which the perpetrator infringes the social value protected by the criminal norm. In the case of the offences of false identity and identity theft, the comparative analysis of the objective element reveals both elements of convergence and fundamental structural differences, which allow the two incriminated acts to be clearly delimited.

The objective element of the offence provided for in Article 177[1] CC RM has a complex structure, the central element of which is the prejudicial act, expressed in the action of unlawfully presenting oneself under a fictitious identity or of attributing such an identity to another person. Accordingly, the legislature provided for two alternative normative modalities of the prejudicial action, namely:

1) Unlawfully presenting oneself under a fictitious identity - a situation in which the perpetrator assumes a fictitious identity. Consequently, he or she identifies himself or herself before third parties or authorities under an identity other than the real one;

2) Unlawfully attributing a fictitious identity to another person - a situation in which the perpetrator, without substituting himself or herself, confers a fictitious identity upon a third person [10, p.668].

The alternative character of the two normative modalities means that, for the existence of the offence, it is sufficient for either of them to be carried out, without it being

necessary for them to be cumulatively fulfilled. At the same time, the examined modalities presuppose the commission of an unlawful action.

In another respect, a distinctive feature of the objective element of the offence of false identity is the method of commission, which in this norm acquires the value of a mandatory constituent element, thereby conferring typicality upon the act [8, p.33]. The legislature expressly and exhaustively provided for the following alternative methods of commission:

1) Using official documents issued in the name of another person – this method presupposes that the perpetrator uses, as a means of committing the offence, official documents that are registered not in his or her own name, but in the name of another person. This method, in our view, is traditional or classical and specific to the physical environment;

2) Registering user accounts on social media platforms, web portals, e-mail addresses, telephone numbers, access cards or other information-society services;

3) Using user accounts on social media platforms, web portals, e-mail addresses, telephone numbers, access cards or other information-society services [2, Art. 177[1]].

The second method concerns the process of generating and storing personal information under a fictitious identity or under the real identity of another person, materialised by creating digital entities within the following categories of information-society services: user accounts on social media platforms; web portals; e-mail addresses; telephone numbers; access cards; other information-society services [8, p.34]. In essence, this method presupposes an act of establishing a false digital presence, whereby the perpetrator creates, under an identity that does not belong to him or her, a virtual existence capable of producing legal effects. The act of registration usually involves providing the identity data of another person to the relevant platforms or service providers, which results in the association of that identity with the account or service thus created. Through this method, the prejudicial act is consummated at the moment when the registration process is completed, irrespective of whether that account or service is subsequently actually used.

The last method provided for by the legislature differs from the second in that it does not concern the creation of a new digital entity, but rather the activity of exploiting the functionalities offered by personal information stored within already existing accounts or services. In other words, this method presupposes the effective exercise of the attributes associated with the fictitious identity or with the identity belonging to another person, the perpetrator acting in the digital environment as if he or she were the legitimate holder of that identity. Such actions may include, by way of example: sending messages in another person's name, posting content under an identity that does not belong to the perpetrator, accessing information available through the account, managing its settings, as well as any other action involving the exploitation of the functionalities offered by the respective service for the purpose pursued by the perpetrator.

Unlike the registration method, in the case of the use of accounts the prejudicial act may be consummated continuously, throughout the period during which the perpetrator benefits from the functionalities of the service under the fictitious identity or under the identity of another person. This gives this modality a potentially more serious character from the perspective of the scope and persistence of the infringement of the protected social value, as the harm caused to the victim may accumulate and progressively worsen as the criminal activity continues.

The two methods described above have one essential common element, namely the means of committing the offence, which are identical in both cases. Thus, regardless of

whether the perpetrator registers or uses an account or a digital service, the technical means employed are the same: social media platforms, web portals, e-mail addresses, telephone numbers, access cards or other information-society services. The identity of the means used justifies the unitary legal treatment of the two methods within the same incriminating norm, the legislature opting for a regulation that exhaustively covers the entire cycle of criminal conduct in the digital environment – from the establishment of the false presence to its exploitation.

The objective element of the offence provided for in Article 260^7 CC RM is distinguished by a more elaborate structure compared with that of the offence of false identity, reflecting the complexity specific to offences in the field of electronic communications. The central element of the objective element consists in the action of obtaining another person's identity, understood as the process by which the perpetrator accesses, acquires or comes into total or partial possession of the data or characteristics forming the identity of another person [7, p.39].

It is essential to emphasise that not every obtaining of another person's identity falls within the scope of Article 260^7 CC RM. In order to be classified under this article, the action must have an unlawful character, which is expressly conferred by the secondary signs of the objective element [7, p.39].

Unlike the offence of false identity, the objective element of identity theft is constructed around secondary signs that confer unlawfulness on the action and that are, at the same time, mandatory constituent elements of the offence:

1) *The fraudulent manner of commission*: represents the first and most important secondary sign of the objective element. It presupposes that the identity is obtained by misleading the user of the computer system, by exploiting a state of appearance deliberately created by the perpetrator. The fraudulent character of the action is what confers unlawfulness on the act and distinguishes it from situations in which identity data are accessed legitimately;

2) *The means of commission*: the second secondary sign consists in the use of a computer or telecommunications system as the instrument through which the act is committed. This feature irreversibly anchors the offence of identity theft in the sphere of cybercrime and structurally distinguishes it from false identity, which may also be committed by a traditional method specific to the physical environment.

3) *The method of commission*: consists in misleading the user of the computer system due to the creation of a state of appearance, that is, by simulating false circumstances or entities (counterfeit websites, fraudulent e-mail messages, false interfaces, etc.) capable of inducing the victim to provide, voluntarily but under a vitiated will, his or her identity data.

The comparative analysis of the objective element of the two offences reveals essential structural differences, confirming that the legislature intended to incriminate two distinct criminal phenomena, even if they are apparently related. False identity is built around the idea of substitution or attribution of a fictitious identity, placing emphasis on the act of fraudulent presentation before third parties, irrespective of the environment in which it occurs. Identity theft, by contrast, is centred on the idea of unlawfully obtaining the identity data of a real person by exploiting computer means and the state of appearance created in the electronic environment.

Another significant difference lies in the role that the secondary signs of the objective element play in the structure of each norm: whereas in the offence of false identity the method of commission serves to circumscribe the concrete modalities for carrying out the action, in the offence of identity theft the secondary signs - the fraudulent man-

ner, the computer-related means and the method of deception - are those that confer unlawfulness on the prejudicial action itself, in the absence of which the act cannot be classified under Article 260^7 CC RM.

These findings are relevant not only from the perspective of the theory of criminal law, but also from a practical standpoint, since the correct delimitation of the objective element of the two offences constitutes the indispensable premise for an exact legal classification in judicial practice.

As regards the legal classification of the offences under analysis, in national doctrine the authors S. Brînza and V. Stati [7, p.42], [8, p.35] expressed the view, in the works mentioned in the present research, which we support, concerning the manner of classifying the offence in the case of concurrence between a part and a whole.

Thus, the two authors opined that, where the offence of false identity is committed in the context of another offence, it loses its individuality, being absorbed by the more serious offence. In such cases, in accordance with the rule laid down in Article 118 CC RM concerning concurrence between a part and a whole, criminal liability will be incurred not for the offence provided for in Article 177^1 CC RM, but for one of the acts specified in letter f) paragraph (1) Article 165, Articles 167, 168, 190, 196, 238, 248, 248^1 or others of the Criminal Code, as applicable. Conversely, in situations where an act is committed which by its nature cannot absorb false identity – such as, for example, murder, driving a means of transport while exceeding the permitted alcohol limit or while intoxicated by other substances, illegal circulation of drugs, ethnobotanicals or their analogues for the purpose of alienation, or other offences - there will be a concurrence of offences between the respective act and the offence provided for in Article 177^1 CC RM [8, p.35].

The same rule of classification applies, by analogy, to the offence of identity theft provided for in Article 260^7 CC RM. In this respect, the same authors, in another work, identified two distinct options for classifying the act, namely: 1) concurrence between the offence provided for in Article 260^7 CC RM and one of the offences provided for in letter f) paragraph (1) Article 165, Articles 167, 168, 190, 196, 238, 248, 248^1 or others of the Criminal Code; and 2) retaining exclusively one of the offences listed above, with the clarification that, in this case, identity theft constitutes the preparatory act for the subsequent offence, thereby losing its criminal autonomy [7, p.42].

With regard to the legal relationship between the offences provided for in Articles 177^1 and 260^7 CC RM, the authors mentioned above are of the opinion that the classification solution differs depending on the chronological sequence and the teleological link between the two acts. Thus, where the intention to commit false identity arose after the consummation of identity theft, the two offences each retain their own individuality and are to be retained in concurrence of offences, according to the general rules applicable to this institution [8, p.35].

By contrast, a different solution is required when, in order to carry out the intention to commit false identity, the perpetrator first obtains the identity of another person fraudulently, through computer or telecommunications systems, misleading the user by creating a state of appearance designed to induce him or her to provide personal data within an electronic communication. In such a hypothesis, identity theft loses its criminal individuality, not being a self-standing offence, but representing exclusively the preparatory act for the offence of false identity provided for in Article 177^1 CC RM; accordingly, only Article 177^1 CC RM is to be applied [7, p.42].

A significant element of similarity between the offence of false identity and the offence of identity theft lies in their formal nature, both offences being deemed consummated from the moment the prejudicial act is committed.

As regards the subjective element, both offences under analysis may be committed exclusively with direct intent, the perpetrator foreseeing the prejudicial character of his or her act and deliberately pursuing the production of its consequences. This common feature excludes the possibility of committing either offence through negligence or with indirect intent, reflecting the legislature's intention to sanction exclusively criminal conduct characterised by a high degree of determination and awareness in relation to the act committed.

Although both offences presuppose direct intent, the special purpose of each constitutes an essential criterion of delimitation, highlighting the distinct aim pursued by the perpetrator in each case.

In the case of the offence provided for in Article 177^1 CC RM, the legislature provided for a special purpose with a dual structure, composed of two components in a relationship of teleological subordination: the primary purpose - to mislead or maintain a person in error as to the identity of the perpetrator or of a third person; the secondary purpose – to produce a legal consequence, that is, to obtain an effect of a legal nature through the error created. The two components of the special purpose are cumulative and indispensable for the application of the norm in Article 177^1 CC RM. In the absence of either of them, the act cannot be classified under this article, because the absence of one of the purposes removes the subjective typicality of the offence [8, p.35].

In the case of the offence provided for in Article 260^7 CC RM, the special purpose consists in inducing the user of the computer system to provide personal data within an electronic communication [7, p.43]. Unlike the dual structure of the purpose provided for in Article 177^1 CC RM, in the case of identity theft the special purpose has a unitary character, directed exclusively toward obtaining the victim's identity data through electronic means.

An aspect of particular importance that deserves emphasis is that the purpose provided for in Article 260^7 CC RM must be achieved prior to the consummation of the offence. This requirement flows from the very constituent content of the act: insofar as the user of the computer system, although misled by the perpetrator, does not provide the latter with personal data within an electronic communication, the perpetrator will not be able to obtain the victim's identity, and the offence will not be consummated in the typical form provided by law [7, p.43]. Therefore, the achievement of the special purpose does not represent a consequence of the consummated offence, but a sine qua non condition of its very consummation.

With regard to the subject of the offence, we observe that the legislature opted for a differentiated regulation of the two incriminating norms, establishing a distinct framework for the persons who may have the status of subject. In the case of the offence provided for in Article 177^1 CC RM, the subject is circumscribed, being exclusively a responsible natural person who, at the time of committing the offence, has reached the age of 16 years [10, p.674].

A significant difference from the offence of false identity is found in the case of the offence provided for in Article 260^7 CC RM, whose subject has a broader scope. Thus, in the case of identity theft, the status of active subject may be held both by a responsible natural person who, at the time of committing the offence, has reached the age of 16 years, and by a legal person, with the exception of public authorities [7, p.43].

Conclusions. The research undertaken in the present study has shown that the offences of false identity and identity theft, introduced into the Criminal Code of the Republic of Moldova by Law No.136/2024, constitute two distinct incriminating norms which, although they directly concern the identity of a natural person, differ essentially in terms

of the protected social values, the structure of the objective and subjective elements, and the status of the subjects who may commit these offences.

The main similarities between the two offences lie in the fact that the immaterial object of both acts is represented by the identity of a natural person; a legal person cannot have the status of victim in these offences; both offences are formal and may be committed exclusively with direct intent.

Nevertheless, the two offences differ fundamentally in multiple respects. From the perspective of their normative placement, false identity is an offence against the constitutional rights of citizens, whereas identity theft belongs to the category of computer-related offences. The special legal object of false identity concerns public trust in the authenticity of identification processes, while that of identity theft protects the security of identity in the electronic environment. The objective element of the two offences differs in that false identity may be committed both in the physical and in the digital environment, whereas identity theft is committed exclusively through computer systems. The special purpose of false identity has a dual structure, presupposing deception and the production of a legal consequence, while the purpose of identity theft is unitary, directed toward obtaining the victim's personal data. At the same time, the subject of the offence of identity theft has a broader scope, including legal persons as well, unlike false identity, which may be committed exclusively by a natural person.

Bibliographical references

1. Law No.136 of 6 June 2024 on the amendment of certain normative acts (amendment of the Criminal Code and the Contravention Code). In: Official Gazette of the Republic of Moldova, 2024, No.245-246, 353.
2. Criminal Code of the Republic of Moldova, No.985-XV of 18 April 2002. In: Official Gazette of the Republic of Moldova, 2002, No.128-129. In force since 12 June 2003.
3. Synthesis of objections and proposals to the draft Law on the amendment of certain normative acts (amendment of the Criminal Code and the Contravention Code). Available: https://particip.gov.md/ro/download_attachment/19386 (accessed 06.04.2026).
4. Law No.195 of 25 July 2024 on the protection of personal data. In: Official Gazette of the Republic of Moldova, 2024, No.367-369, 574.
5. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Available: https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A32016R0679 (accessed 06.04.2026).
6. Brînza S. The object of the offences provided for in Article 1851 of the Criminal Code. In: Intellectus Journal 2/2023. Available: https://agepi.gov.md/sites/default/files/intellectus/intellectus_02-2013_36.pdf (accessed 06.04.2026).
7. Brînza S., Stati V. Identity theft: Anatomy of an offence in the digital era. In: Studia Universitatis Moldaviae (Social Sciences Series), 2025, No.8(188), ISSN 1814-3199.
8. Brînza S., Stati V. False identity: What is it and when does it trigger criminal liability? In: Studia Universitatis Moldaviae (Social Sciences Series), 2025, No.3(183), ISSN 1814-3199.
9. Law No.124 of 19 May 2022 on electronic identification and trust services. In: Official Gazette of the Republic of Moldova, 2022, No.170-176, 317.
10. Tabacaru D., Nastas A. *Legal-criminal analysis of the crime of false identity*. In: Law and Life Journal, Special edition, 2025.

CZU 343.13/.14 DOI: https://doi.org/10.5281/zenodo.20826350

THE PRINCIPLES GOVERNING THE JUDICIAL INVESTIGATION DURING THE TRIAL ON THE MERITS OF CRIMINAL CASES

Vadim GRIBINCEA,
PhD Student,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Prosecutor, Chișinău Municipality Prosecutor's Office,
Trainer, National Institute of Justice,
Republic of Moldova
ORCID: 0009-0009-6785-774X

Abstract

Judicial investigation represents a fundamental stage of the criminal process, during which the court directly examines the evidence in order to establish the factual situation and deliver a lawful and well-founded judgment, thereby contributing decisively to the discovery of the truth.

At this stage, the parties present and support their positions, while the judge forms his or her conviction based on the direct assessment of the evidence administered.

The conduct of the proceedings is governed by fundamental principles such as immediacy, orality, adversariality, equality of arms, and the publicity of hearings, which constitute essential guarantees of the right to a fair trial, in accordance with Article 6 of the European Convention on Human Rights.

These principles are not merely formal in nature; they ensure procedural balance, transparency, and the protection of the rights of all participants.

Their importance is decisive for the legality and fairness of the administration of justice, as their violation may lead to serious procedural sanctions, such as the nullity of acts or the annulment of the judgment.

Keywords: judicial investigation, principle of immediacy, principle of adversarial proceedings, principle of public hearings, principle of orality, principle of equality of arms in criminal proceedings.

PRINCIPIILE CARE GUVERNEAZĂ CERCETAREA JUDECĂTOREASCĂ LA EXAMINAREA ÎN FOND A CAUZELOR PENALE

Abstract

Cercetarea judecătorească reprezintă o etapă de bază a procesului penal, în cadrul căreia instanța examinează direct probele pentru a stabili situația de fapt și a pronunța o hotărâre legală și temeinică, contribuind în mod decisiv la aflarea adevărului.

În această etapă, părțile își expun și își susțin punctele de vedere, iar judecătorul își formează convingerea în baza analizei directe a probelor administrate.

Desfășurarea procesului este guvernată de principii fundamentale, precum nemijlocirea, oralitatea, contradictorialitatea, egalitatea părților și publicitatea ședințelor, care reprezintă garanții esențiale ale dreptului la un proces echitabil, în concordanță cu prevederile art. 6 din CEDO.

Aceste principii nu au doar un rol formal, ci asigură echilibrul procesual, transparența și respectarea drepturilor tuturor participanților.

Importanța lor este determinantă pentru legalitatea și corectitudinea actului de justiție, întrucât nerespectarea acestora poate atrage sancțiuni procesuale grave, precum nulitatea actelor sau anularea hotărârii.

Cuvinte-cheie: cercetare judecătorească, principiul nemijlocirii, principiul contradictorialității, principiul publicității ședinței de judecată, principiul oralității, principiul egalității armelor în procesul penal.

Introduction. Judicial investigation is the central stage of criminal proceedings, during which the court directly examines the evidence and establishes the circumstances of the case, based on the fundamental principles of criminal procedure.

These principles—publicity, orality, adversarial proceedings, immediacy, and equality of arms—are enshrined in the Criminal Procedure Code and in Article 6 of the European Convention on Human Rights, serving as guarantees of balance between the prosecution and the defense.

Overall, judicial investigation ensures the establishment of judicial truth, the substantiation of court decisions, and the maintenance of a balance between procedural efficiency and respect for the parties' procedural rights.

Methods and materials applied. In drafting this article, various theoretical, normative, and empirical sources were used. The study of the topic was carried out by applying scientific methods specific to the doctrine and theory of criminal procedure, including the logical method, comparative analysis, and the systemic approach, all of which contributed to a complex and in-depth examination of the subject.

Purpose of the research. The purpose of this research is to analyze the national legal framework, relevant case law, and doctrine concerning the principles governing judicial investigation in the trial on the merits of criminal cases.

Discussions and results obtained. Judicial investigation is the main stage of the trial of a criminal case, during which the court examines the evidence administered and, where necessary, admits new evidence in order to establish the truth. At this stage, the act, the defendant's guilt, criminal liability, and the damage caused are analyzed.

All evidence is directly examined by the court under conditions of publicity, orality, adversarial proceedings, and immediacy, thereby ensuring a fair and transparent process.

This stage has an essential role both procedurally and substantively, as it allows for the clarification of all the circumstances of the case and constitutes the basis of the court's judgment, directly contributing to the achievement of the fundamental purpose of criminal proceedings—establishing the truth and correctly applying the law.

The trial of a criminal case is conducted according to general and uniform rules, known as the general conditions for the adjudication of criminal cases. These rules provide a unified procedural framework, applicable regardless of the level of the competent court—whether a court of first instance, a court of appeal, or the Supreme Court of Justice.

The rules governing the investigation and resolution of a case are referred to as principles; they form the foundation of the entire criminal process and ensure its coherence at all stages. Principles have general applicability within criminal procedure, influencing all procedural institutions, unlike legal norms, which apply only to specific stages of the process.

In essence, criminal proceedings represent the totality of activities carried out by criminal investigation bodies and courts, with the participation of the parties involved. This entire activity is governed by fundamental principles enshrined in Chapter II of the Criminal Procedure Code, entitled "General Principles of Criminal Proceedings", which comprises a total of 22 principles.

However, the Criminal Procedure Code does not provide, in Article 6 entitled "Terms and expressions used in this Code", an explicit definition of the notion of "principle", which may be regarded as a legislative omission.

Although Chapter II of the General Part enshrines the general principles of criminal proceedings, judicial investigation in the Republic of Moldova is regulated by specific rules set out in Articles 314-316 of the Criminal Procedure Code, which establish the manner of examining cases and conducting this stage within the criminal process.

These principles go beyond their mere nature as procedural rules, representing fundamental guarantees of the right to a fair trial. They are fully consistent with the provisions of Article 6 of the European Convention on Human Rights, which enshrines the minimum standards of fairness in criminal proceedings and imposes on states the obligation to ensure a genuine balance between the interests of the prosecution and the rights of the defense.

The importance of these principles has been consistently emphasized in the case law of the European Court of Human Rights.

Thus, in Doorson v. the Netherlands (§ 70), the Court underlined the need to ensure a fair balance between the rights of the defense and the interests of witnesses or the prosecution.

In Bönisch v. Austria (§§ 31–35), it was held that the principle of equality of arms constitutes an essential component of a fair trial.

At the same time, in Luca v. Italy (§§ 38–45), the Court stressed the importance of respecting the adversarial principle and the genuine opportunity for the parties to challenge evidence.

A central place is held by the principle of immediacy of judicial investigation, which requires the court to directly examine all evidence administered in the case.

According to Article 314(1) of the Code of Criminal Procedure, during the examination of the case, the court must directly and comprehensively analyze the evidence presented by the parties or admitted at their request, including hearing the defendants, injured parties, and witnesses, examining material evidence, reading expert reports, records, and other documents, as well as verifying any other evidence provided by law.

The importance of this principle lies in the fact that the court must have direct and immediate contact with the entire body of evidence. For this reason, it is preferable that witnesses be heard in person before the court, and that material evidence be presented at the request of any party to the proceedings.

Immediacy allows the court to assess the credibility of evidence not only based on its content, but also on the manner in which it is presented. Thus, the court must form its own conviction on the basis of direct perception, not indirect assessment.

The judicial decision must be based exclusively on the evidence administered and examined during the court hearing, and not on evidence collected during the criminal investigation phase, in the absence of direct examination by the judge.

The importance of this principle is also reflected in the case law of the European Court of Human Rights, which has emphasized that the lack of direct examination of evidence may affect the fairness of the proceedings.

In Škaro v. Croatia (06.12.2016, §§ 23-24), the Court highlighted certain principles applicable in situations where there is a change in the composition of the trial panel, an aspect that may affect compliance with the principle of immediacy. The Court also emphasized that those responsible for determining the guilt or innocence of a defendant must, in principle, have the opportunity to directly hear victims, the accused, and witnesses in order to properly assess their credibility.

A relevant example from judicial practice concerning the non-observance of the principle of immediacy can be found in the case of C.A., accused of committing the offense provided for in Article 191(2)(c) of the Criminal Code. In that case, the court based its conviction on the statements of a witness heard on 6 July 2021 by a judge different from the one who delivered the judgment on 14 February 2025.

The court also relied on the statements of the representative of the injured party,

ICS "R.S.D.", C.O.V., given during the same hearing, which the defense had the opportunity to confront.

However, during the preliminary hearing and the judicial investigation, the defense requested the rehearing of the representative and other witnesses before the new panel of judges, invoking the need for the court to have direct contact, through immediate perception, with the entire body of evidence in the presence of the parties.

In reality, the court did not carry out such direct examination due to the impossibility of ensuring the presence of the representative and other witnesses, some of whom had already been heard by the initial panel during a public hearing.

This irregularity was subsequently remedied at the appellate stage, the higher court ordering the taking of the necessary evidence to ensure compliance with the principle of immediacy and the continuity of the judicial investigation, including by admitting requests for the hearing of persons whose statements had formed the basis of the judgment.

A similar situation is also found in the case of G.A. and I.V., in which the defendants were accused of committing the offense provided for in Article 264(3)(b) of the Criminal Code. In that case, the court based its judgment of 9 April 2025 on statements that were not directly taken by the judge who decided the case, but by another judge who had previously examined the file.

During the examination of the case on appeal before the Centru Court of Appeal, taking into account the acquittal of the defendant I.V., as well as the provisions of Article 415(2^1) of the Criminal Procedure Code, the criminal panel partially granted the request of the public prosecutor to hear witnesses. Consequently, it ordered the hearing only of those witnesses whose statements had been read out during the trial and used as a basis for the first-instance judgment, without having been directly examined by the judge.

Article 371 of the Criminal Procedure Code does not currently allow, in cases examined by a single judge, the reading of statements taken by a judge other than the one who is to decide the case.

The principle of orality complements immediacy and requires that criminal proceedings be conducted verbally before the court, with all evidence being presented, debated, and analyzed directly during the hearing. Thus, witnesses are heard directly by the judge, and relevant documents are brought to the court's attention through reading or oral presentation, the process taking the form of a judicial dialogue in which the parties present and challenge their arguments, having the opportunity to express and contest them directly.

This manner of conducting the judicial investigation ensures transparency, dynamism, and the adversarial nature of the proceedings, facilitating a full understanding of the circumstances of the case and a direct assessment of the positions of the participants. Orality governs the entire conduct of the trial, from the taking of evidence and hearing of witnesses to the presentation of final submissions, constituting the main means of communication between the court and the parties. Although it has a broader scope than immediacy, being characteristic of the entire hearing, it operates in close connection with the principle of adversarial proceedings, contributing to the realization of a fair trial.

Consequently, the judicial decision must be based exclusively on circumstances examined orally before the court, orality playing an essential role in guaranteeing publicity, immediacy, and the effective exercise of the parties' right to participate in the proceedings.

The principle of adversarial proceedings implies the right of the parties to be informed of all evidence and observations submitted to the court, to discuss them, and to express their position on them, so that no evidence capable of influencing the judgment is

examined without being subject to debate between the parties. In this respect, the court cannot rule on a criminal case before it has been subject to adversarial debate, as the right to decide may only be exercised after effectively guaranteeing the right of defense for both parties.

Thus, the judicial investigation is carried out through the confrontation of the arguments of the prosecution and the defense, each circumstance being analyzed and each piece of evidence verified from different perspectives, allowing the court to hear and assess all arguments in a balanced manner, both in support of the prosecution and in defense of the accused.

The conduct of the judicial investigation under adversarial conditions constitutes an implicit requirement of the right to a fair trial. Although this principle is not expressly stated in Article 6 of the European Convention on Human Rights, it has been consistently recognized in the case law of the European Court of Human Rights as a fundamental element of judicial proceedings. It is considered respected when the parties have a genuine opportunity to be informed of the evidence, to submit observations, and to debate the claims and objections raised by the opposing party.

The principle is also regarded as fulfilled when the defense has access to all evidence in the case, both incriminating and exculpatory. In this respect, the parties' right to be informed about the evidentiary material includes the right of access to the case file, as well as the right to know the facts retained and their legal classification—essential elements for the effective exercise of the right of defense.

Another principle under analysis is the principle of equality of arms in criminal proceedings, which, although it may at first appear to overlap with the adversarial principle, is in fact distinct, having its own content and function within the criminal process.

Although not expressly enshrined in the Constitution, the principle of equality of arms is recognized as an indispensable requirement of the right to a fair trial. It was first established in the case law of the European Court of Human Rights in the judgment of 27 June 1968 in *Neumeister v. Austria*, and its first violation was found in the judgment of 16 July 1971 in *Ringeisen v. Austria*.

The essence of this principle lies in guaranteeing each party a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage vis-à-vis the opposing party. In this regard, the court has the obligation to ensure a balanced procedural framework, providing the parties with equal, sufficient, and appropriate means to support and argue their positions.

This principle is also enshrined in Article 24 of the Criminal Procedure Code, according to which the parties participating in the trial enjoy equal rights and equivalent opportunities to support their positions. At the same time, the court bases its judgment only on evidence to the examination of which the parties have had equal access.

The law further provides that the parties determine independently their positions and means of defense, acting independently of the court, which may, upon request, assist them in taking the necessary evidence under the conditions provided by law.

The principle of equality of arms, as developed in the case law of the European Court of Human Rights, represents an essential component of the right to a fair trial. In *Bulut v. Austria*, it was defined as the obligation to ensure each party a reasonable opportunity to present their case without being placed at a disadvantage compared to the opponent.

This principle aims to maintain procedural balance, guaranteeing equal access to evidence and the possibility to challenge it. Any imbalance must be demonstrated by the party invoking it.

Although it is a fundamental guarantee, the principle of equality of arms is not absolute, the Court recognizing the possibility of certain exceptions.

In conjunction with Article 6 § 3 (d) of the European Convention on Human Rights, this principle requires that the accused have an effective opportunity to challenge the prosecution's evidence and to examine witnesses, including by putting questions to them and verifying their credibility. If witness statements are merely read out during the hearing without the possibility of direct questioning, the defense may be disadvantaged, as it cannot fully exercise its right to challenge their credibility.

The trial stage generally offers the broadest procedural guarantees for the defense, including the hearing of witnesses, experts, and the presentation of its own evidence, being the stage in which the principles of adversarial proceedings and immediacy are effectively realized. The judge thus has the possibility to directly assess the reliability of the evidence, contributing to a fair resolution of the case.

However, the reading of witness statements is permitted in order to ensure the expediency of criminal proceedings, in objective situations such as the impossibility of securing their presence.

This solution prevents delays and maintains the efficiency of the process.

For the use of such statements to be compatible with the requirements of a fair trial, clear rules and procedural safeguards must exist to ensure a balance between procedural efficiency and the right of defense. The European Court of Human Rights has established in its case law the conditions under which statements made by witnesses at earlier stages of criminal proceedings may be used during trial.

A key reference is *Al-Khawaja and Tahery v. the United Kingdom*, in which the Court developed a three-step test for assessing the admissibility of such statements. In essence, it must be cumulatively verified: the existence of good reasons for the witness's absence and the diligence of the authorities in securing their presence; the decisive or determinative nature of the statement in the overall body of evidence; and the existence of sufficient procedural safeguards to compensate for the absence of the witness and ensure the fairness of the proceedings.

In subsequent case law, including *Schatschaschwili v. Germany*, the Court reaffirmed the need to respect the right to confrontation and the effective possibility of examining witnesses, even where they are not physically present before the court.

At the same time, in *Klimentyev v. Russia*, it was emphasized that although the presentation of evidence in a public hearing and in the presence of the accused is the rule, the use of statements from the investigation stage is not, in itself, incompatible with Article 6 of the Convention, provided that the rights of the defense are respected. This includes, in essence, the possibility for the accused to question witnesses, either at the time they are heard or at a later stage of the proceedings.

In *Rachdad v. France*, the Court held that in certain situations it may be necessary for judicial authorities to rely on statements made during the preliminary investigation. If the accused had an adequate and sufficient opportunity to challenge such statements, either when they were made or at a later stage, their use does not in itself violate Article 6 § 1 and § 3 (d). However, the rights of the defense are considered restricted in a manner incompatible with Article 6 when a conviction is based solely or decisively on statements made by a person whom the accused was unable to examine, either during the investigation phase or at trial.

Nevertheless, any derogation is admissible only if it does not affect the substance of the right of defense.

Based on the above, the difference between the principle of adversarial proceedings and the principle of equality of arms lies in their object and purpose, although both represent essential guarantees of the right to a fair trial. The adversarial principle concerns the manner in which criminal proceedings are conducted and implies the active participation of the parties, who have the right to be informed of all evidence, to discuss it, and to present their arguments before the court. It ensures the framework for an effective debate between the prosecution and the defense.

By contrast, the principle of equality of arms concerns procedural balance between the parties, guaranteeing them equal conditions in exercising their procedural rights so that neither is disadvantaged in presenting their case. Thus, adversarial proceedings represent the mechanism of judicial debate, while equality of arms constitutes the guarantee of balance within that debate.

The principle of publicity of court hearings is enshrined in Articles 18 and 316 of the Criminal Procedure Code of the Republic of Moldova and represents one of the fundamental guarantees of a fair and transparent criminal process. According to these provisions, court hearings are, as a rule, public, allowing access to any interested person, subject to certain legal limitations.

Article 18 provides that publicity may be restricted by a reasoned decision of the court in strictly determined situations, such as the protection of morality, public order, national security, private life, or the interests of minors, as well as where the interests of justice so require. In particular, in cases involving minors as victims or witnesses, their hearing is conducted in camera.

At the same time, even in non-public hearings, the court is obliged to observe procedural rules and the parties' rights, and judgments are always delivered in public. Article 316 further provides that any person may attend public hearings, except minors under 16 and persons carrying weapons, although the presiding judge may authorize their presence under certain conditions.

In cases of public interest, the media may make audio-video recordings or take photographs, provided that this does not affect the proper conduct of the proceedings or the rights of the participants. The court may also limit public access where the circumstances of the case so require.

The principle of publicity is also enshrined in constitutional provisions, with Article 117 establishing that court hearings are generally public, while closed hearings are permitted only in cases expressly provided by law and in strict compliance with procedural rules.

Publicity of hearings is a guarantee of transparency and public confidence in the administration of justice, ensuring access to proceedings and enabling social control over judicial activity. However, this principle is not absolute, as the law allows closed hearings under the conditions set out in Article 18(2) of the Criminal Procedure Code, in line with Article 6 § 1 of the European Convention on Human Rights. Such limitations are applied strictly depending on the circumstances of the case and are also reflected in the case law of the European Court of Human Rights.

The principle of publicity requires that criminal proceedings be conducted in open hearings accessible to the public and the press, ensuring transparency in the administration of justice. It plays an essential role in guaranteeing confidence in the courts, as it allows the public to observe how the parties' rights are respected and how procedural principles are applied. It also promotes a more responsible conduct of proceedings, as the parties present their arguments under public scrutiny.

Open justice fosters trust in judicial decisions, as citizens can understand not only

the outcome but also the reasoning behind it. Although exceptions exist, transparency remains the general rule, contributing to the protection of the right to a fair trial and the rights of participants.

Conclusions. Judicial investigation represents the central stage of criminal proceedings, in which the court directly examines the evidence and establishes the circumstances of the case based on the fundamental principles of criminal procedure.

These principles—publicity, orality, adversarial proceedings, immediacy, and equality of arms—constitute guarantees of a fair trial, enshrined in Article 6 of the European Convention on Human Rights and consolidated in the case law of the European Court of Human Rights. Adversarial proceedings and equality of arms ensure balance between the parties, while immediacy and orality allow the court to directly perceive the evidence.

The application of these principles may involve certain exceptions, such as limitations on publicity or the use of witness statements, but only under strictly regulated conditions and with due respect for the right of defense, in accordance with European jurisprudential standards (e.g., *Al-Khawaja and Tahery*, *Doorson*).

Overall, the effectiveness of criminal proceedings depends on maintaining a balance between respect for fundamental principles and the use of justified exceptions, in order to ensure a fair trial and the establishment of the truth.

Recommendations:

1. Legislative clarification of the notion of a criminal procedural principle, by supplementing Article 6 of the Code of Criminal Procedure, in order to avoid divergent interpretations in practice and doctrine.

2. More detailed regulation of the criteria for applying exceptions to the principle of immediacy, particularly in the case of reading witness statements, by explicitly incorporating the standards established in the case law of the European Court of Human Rights (notably the Al-Khawaja and Tahery test and subsequent jurisprudence).

3. Strengthening the guarantees of adversarial proceedings in relation to evidence taken prior to trial, by ensuring an effective opportunity to challenge and examine witnesses whenever possible.

4. Improving the regulation of the publicity of court hearings by establishing clearer criteria for its restriction, so that limitations on public access are proportionate and sufficiently reasoned.

5. Express harmonization of domestic legal provisions with European Convention standards, including explicit references to the principle of equality of arms and to the criteria of procedural fairness developed in the Court's case law.

These measures would contribute to increasing the predictability of procedural rules, strengthening the right of defense, and enhancing the guarantees of a fair criminal process in the Republic of Moldova.

Bibliographical references

1. Catan I. Egalitatea armelor – garanţie a dreptului la un proces echitabil. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/210-214_7.pdf (accesat 14.04.2026).
2. Codul de procedură penală al Republicii Moldova, nr.122 din 14 martie 2003. În: Monitorul Oficial al Republicii Moldova, 2003, nr.104-110. Disponibil: https://www.legis.md/cautare/getResults?doc_id=153916&lang=ro (accesat 14.04.2026).
3. Constituţia Republicii Moldova din 29.07.1994. În: Monitorul Oficial al Republicii Moldova, nr. 466, art. 635 din 13.11.2024. Disponibil: https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro (accesat 15.04.2026).
4. Costișanu F. Excepţii de la principiul egalităţii armelor în procesul penal în juris-

prudenţa curţii europene a drepturilor omului. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/41-46_22.pdf (accesat 15.04.2026).
5. Decizia Curții Constituționale de inadmisibilitate nr.12 din 6 martie 2024 privind inadmisibilitatea sesizării nr.213g/2023 referitoare la excepția de neconstituționalitate a unor prevederi din articolul 313 alin. (4) din Codul de procedură penală (examinarea plângerii de către judecătorul de instrucție fără prezența părților) §§ 25-26. Disponibil: https://constcourt.md/public/ccdoc/decizii/d_12_2024_213g_2023_rou.pdf (accesat 14.04.2026).
6. Gribincea V. Convingerea judecătorului și respectarea principiului nemijlocirii în cadrul cercetării judecătorești la examinarea în fond a cauzelor penale. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/Materialele_conf_inter_Protect_dr_lib_om_in_proces_asig_ordin_publice_2025_compres-894-902.pdf (accesat 16.04.2026).
7. Gribincea V., Hmeli D., Șaporda E. Unele aspecte privind citirea declarațiilor martorului în ședința de judecată. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/56-61_56.pdf (accesat 16.04.2026).
8. Hmeli D., Șaporda E. Problematica admisibilităţii citirii declaraţiilor martorului absent în şedinţa de judecată. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/22-28_39.pdf (accesat la 16.04.2026).
9. Hotărârea CtEDO Doorson v. Olandei, nr. 20524/92 din 26.03.1996. Disponibil: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57972%22] (accesat 16.04.2026).
10. Hotărîrea CtEDO în cauza Bonish v. Austria, nr.8658/79 din 06.05.1985. Disponibil: https://hudoc.echr.coe.int/?i=001-57443 (accesat 17.04.2026).
11. Hotărîrea CtEDO în cauza Luca v. Italy, nr.33354/96 din 27.02.2001. Disponibil: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22luca%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-59222%22 (accesat 17.04.2026).
12. Moraru V., Gherasim D. Aspecte conceptuale referitoare la cercetarea judecătorească în procesul penal al Republicii Moldova. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/Aspecte%20conceptuale%20referitoare%20la%20cercetarea%20judecatoreasca%20in%20procesul%20penal%20al%20RM.pdf (accesat 16.04.2026).
13. Osoianu T., Ostavciuc D. Nemijlocirea, oralitatea și contradictorialitatea judecării cauzei penale. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/17-27_13.pdf (accesat la 16.04.2026).
14. Ostavciuc D. Publicitatea ședinței de judecată. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/67-77_8.pdf.
15. Rusu L. Contradictorialitatea în coraport cu alte principii ale procesului penal. Disponibil: https://social.studiamsu.md/wp-content/uploads/2015/01/24.-p.176-183.pdf (accesat la 15.04.2026).
16. Rusu L. Principiul contradictorialității în procesul penal al unor state din sistemul de drept romano-germanic. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/226-231_14.pdf (accesat la 17.04.2026).
17. Sentința Judecătoriei Chișinăului sediul Buiucani din 09 aprilie 2025, dosarul nr.1-2525/2020. Disponibil: https://jc.instante.justice.md/ro/pigd_integration/pdf/OWU5ZDEzZDktNDU3OC00YzEwLTg5ZDUtYTJmMjRlZDE2NjVi (accesat la 16.04.2026).
18. Trocin E. Dreptul – principiu la un proces contradictoriu – condiţie indispensabilă realizării unui acces efectiv la justiţie. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/170-178_10.pdf (accesat la 16.04.2026).

CZU 342.9:343.346 **DOI: https://doi.org/10.5281/zenodo.20826459**

THE ELECTRONIC RECORD OF ASCERTAINMENT OF ROAD TRAFFIC CONTRAVENTION: ASPECTS OF LEGALITY AND PROCEDURAL COMPLIANCE

Doinița ȚÎMBALARU,
PhD Candidate, University Assistant,
Private Law Department,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID ID 0009-0002-7359-0171

Marius Ioan MUREȘAN,
PhD,
Inspectorate of Police, Satu Mare County,
Romania
ORCID: 0009-0006-2579-6000

Abstract

The paper examines the electronic report of finding the traffic contravention from the perspective of legality and procedural compliance, highlighting the gaps and inconsistencies in the normative framework of the Republic of Moldova. In the context of the accelerated digitization of public services and the implementation of e-government solutions, the use of electronic means in the activity of finding and sanctioning traffic contraventions raises a series of legal problems insufficiently regulated by the legislation in force.

The study analyzes the applicable legal framework, with reference to the provisions of the Contravention Code of the Republic of Moldova (Law No.218/2008), to the specific rules in the field of road traffic regulated by Law No.131/2007, as well as the provisions of Law No.91/2014 on electronic signature and electronic document. It is noted that the transposition of the classic procedure for drawing up the minutes into electronic format generates significant procedural vulnerabilities, in particular with regard to the formal requirements of the act, the method of communication to the offender and the guarantees of the rights of defence.

The paper identifies the main shortcomings of the current regulation, including the absence of clear rules on the probative value of electronic video recordings, the legal uncertainty regarding the electronic authentication of the ascertaining agent and the risks of nullity of the act in the context of judicial challenge.

Keywords: electronic report, traffic contravention, procedure, digitization, legality.

PROCESUL-VERBAL ELECTRONIC DE CONSTATARE A CONTRAVENȚIEI RUTIERE: ASPECTE DE LEGALITATE ȘI CONFORMITATE PROCEDURALĂ

Abstract

Lucrarea examinează procesul-verbal electronic de constatare a contravenției rutiere din perspectiva legalității și a conformității procedurale, evidențiind lacunele și inconsecvențele din cadrul normativ al Republicii Moldova. În contextul digitalizării accelerate a serviciilor publice și al implementării soluțiilor e-guvernare, utilizarea mijloacelor electronice în activitatea de constatare și sancționare a contravențiilor rutiere ridică o serie de probleme juridice insuficient reglementate de legislația în vigoare.

Studiul analizează cadrul legal aplicabil, cu referire la dispozițiile Codului contravențional al Republicii Moldova (Legea nr. 218/2008), la normele specifice din domeniul circulației rutiere reglementate de Legea nr. 131/2007, precum și la prevederile Legii nr. 91/2014 privind semnătura electronică și documentul electronic. Se constată că transpunerea procedurii clasice de întocmire a procesului-verbal în format electronic generează

vulnerabilități procedurale semnificative, în special cu privire la cerințele de formă ale actului, la modalitatea de comunicare către contravenient și la garanțiile dreptului la apărare.

Lucrarea identifică principalele deficiențe ale reglementării actuale, printre care absența unor norme clare privind valoarea probatorie a înregistrărilor video electronice, incertitudinea juridică referitoare la autentificarea electronică a agentului constatator și riscurile de nulitate a actului în cadrul contestării judiciare.

Cuvinte-cheie: proces-verbal electronic, contravenție rutieră, procedură, digitalizare, legalitate.

Introduction. The digital transformation of public administration has generated, in recent years, profound reconfigurations of the classic mechanisms for finding and sanctioning contraventions, including in the field of road traffic. The contravention report – a traditional legal instrument, enshrined in procedural norms dating back to the period of Soviet and post-Soviet contravention codifications, is today faced with a challenge of epistemic and normative nature: the transition from the written material support to the electronic form.

The replacement or completion of the classic report with its electronic version, automatically generated by road surveillance systems (fixed or mobile speed control cameras, license plate recognition systems, traffic light monitoring devices), raises a series of fundamental questions regarding the legality of the contravention act thus drawn up and its compliance with the procedural guarantees established in favor of the sanctioned person. However, the contravention report is not a simple administrative act of recording facts – it represents the enforceable title by which the contravention liability of a person is engaged, with all the related legal consequences [14].

The present research starts from the premise that the digitization of the contravention procedure, no matter how justified it may be from the perspective of administrative efficiency and the fight against the traffic crime phenomenon, cannot operate in the absence of a coherent regulatory framework and adequate procedural guarantees. The issue concerned has at least three distinct, but interdependent dimensions: (i) the dimension of formal legality, regarding the legal basis of the electronic report and its compatibility with the provisions of the Contravention Code; (ii) the evidentiary dimension, relating to the probative value of the approved technical means and the presumption of veracity of the digital recordings; and (iii) the dimension of the guarantees of the rights of defense, with emphasis on the effective possibility of the offender to challenge the sanctioning act and to benefit from a fair trial within the meaning of Art.6 of the European Convention on Human Rights.

The study is structured around the comparative analysis of the regulations in force, the relevant jurisprudence and the specialized doctrine, in order to identify the existing legislative gaps and to formulate proposals for *lege ferenda* aimed at ensuring a rational balance between the imperatives of procedural efficiency and the protection of the fundamental rights of the person subject to the contravention procedure.

Methods and materials applied. The investigation of the legality and procedural compliance aspects of the electronic traffic contravention report required the use of a set of methods and procedures specific to scientific legal research, selected in relation to the normative and interpretative nature of the object of study.

From the category of general research methods, the logical method was capitalized, through which coherent legal reasoning was constructed regarding the validity of the electronic contravention act, resorting to both the deductive procedure – from the general principles of contravention law to the concrete norm – and the inductive one, starting from jurisprudential solutions to general conclusions [1]. The historical method

allowed to follow the evolution of the contravention report in Moldovan law, from the Soviet regulations to the current normative framework, highlighting the continuity and ruptures that occurred in relation to the digitization of the procedure. The comparative method was applied by relating the domestic regulations to the legislative solutions adopted in Romania, France and Estonia, states with relevant experience in the field of automatic detection of traffic offences.

From the category of special legal methods, the dogmatic method was the central pillar of the research, materialized in the systematic analysis of the provisions of the Contravention Code of the Republic of Moldova No.218/2008; of the Law on Electronic Signature and Electronic Document No.91/2014; of the Road Traffic Regulation and of the secondary normative acts regarding the approval of technical means of ascertainment. The interpretation of these texts was carried out through grammatical, systematic and teleological procedures, in order to establish whether the electronic form of the report satisfies the requirements of formal and material legality imposed by the law. The case-law method complemented the normative analysis by examining the judgments of the national courts in cases challenging the automatically generated minutes, as well as the case-law of the European Court of Human Rights on the compatibility of automated contravention procedures with the guarantees of Article 6 of the Convention, in particular from the point of view of the presumption of innocence and the rights of an effective defence.

The materials used include primary national and international normative sources, specialized doctrine of Moldovan and comparative contravention law, relevant national and European jurisprudence, as well as technical standards of the International Organization of Legal Metrology (OIML) on the approval of measuring devices used in the automatic detection of traffic violations.

Discussions and results obtained. The contravention process, as a set of activities carried out by the competent authorities in order to ascertain the fact, identify the perpetrator and apply the sanction provided by law, is governed, in Moldovan law, by a set of fundamental principles with constitutional value: legality, adversarial nature, guarantee of the right to defense and presumption of innocence. The observance of these principles is not a procedural option, but a condition for the validity of the entire sanctioning process, the non-fulfillment of which entails the nullity of the issued acts and the impossibility of engaging contravention liability [12]. Within this principled framework, the contravention report occupies a central and unrepeatable position: it is not a simple act of record, but the legal title through which the finding of the fact materializes and triggers the contravention liability mechanism, producing direct and immediate effects on the rights and freedoms of the person concerned.

The digitalization and generalization of automatic road traffic surveillance systems have placed this traditional legal institution in front of a fundamental challenge, which is not only technical, but profoundly normative: under what conditions and with the observance of what guarantees can the contravention report migrate from the classic paper medium to the electronic environment, without this transformation affecting the legality of the act and the rights of the sanctioned person?

The finding of the contravention act represents the first and most important stage of the contravention process, since the validity of the entire procedural chain that follows depends on its correctness and legality: the preparation of the act of ascertainment, the examination of the case and the application of the sanction. In the absence of a legal finding, any subsequent act is vitiated, and the contravention liability cannot be validly

engaged. This procedural logic is reflected in the architecture of the Contravention Code of the Republic of Moldova No.218/2008, which dedicates a separate chapter to the regulation of the ascertainment process, establishing both the material and territorial competence of the ascertaining agents, as well as the formal and substantive conditions of the procedural acts issued at this stage.

According to Art. 440 para. (1) of the Contravention Code, the contravention process is the activity carried out by the competent authority, with the participation of the parties and other persons holding rights and obligations, with the purpose of establishing the contravention, examining the contravention case and solving it. The ascertaining agent - the public official vested by law with powers of ascertainment in a determined field – is the central actor of this stage, being the one who perceives the deed, identifies the perpetrator, administers the evidence and draws up the act of ascertainment. The competence of the ascertaining agents in the field of road traffic belongs mainly to the bodies of the Ministry of Internal Affairs, respectively to the traffic policemen, to whom the Contravention Code attributes, through art. 400, the competence to ascertain and examine the contraventions provided for in Chapter XIII of the First Book, dedicated to contraventions in the field of road traffic.

The procedural act by which the finding of the fact materializes is the report on the contravention, regulated by Articles 442 and 443 of the Contravention Code. Art.442 establishes that the report constitutes the basic act of the contravention procedure, and Art.443 exhaustively lists the mandatory elements of its content: the date and place of its preparation, the position, the name and surname of the ascertaining agent, the identity data of the offender, the description of the contravention act, the legal norm violated, the evidence administered, the objections of the offender and the signatures of the parties. Failure to comply with the content requirements provided by Article 443 entails, according to Article 445 of the Code, the nullity of the report, with the consequence of the impossibility of engaging the contravention liability based on an act hit by nullity.

This normative architecture was conceived in the logic of direct, direct ascertainment of the deed by a human agent: the ascertaining agent personally perceives the contravention, comes into contact with the offender, informs him of the deed retained, gives him the opportunity to formulate objections and records all this in a written document, which he personally signs and hands over to the offender [9]. This procedural dynamic contains, by itself, a set of implicit guarantees in favour of the sanctioned person: the possibility of knowing in real time the findings of the agent, of contesting them on the spot, of requesting the recording of objections and of identifying the author of the act. It is precisely these implicit guarantees that disappear in the context of the automatic finding and electronic form of the report, generating the legal vulnerabilities that the present research subjects to analysis.

In the field of road traffic, the general normative framework is completed by the Road Traffic Regulation approved by Government Decision No.357/2009, which establish the rules of conduct of traffic participants and constitute the material basis of the contraventions provided for in Chapter XIII of the Contravention Code. At the same time, the regulations on the approval and metrological verification of the technical equipment used in the automatic detection of traffic contraventions – fixed speed control cameras, license plate recognition systems, traffic light monitoring devices – complete the applicable regulatory framework, as the legality of the automatic finding is directly conditioned by the compliance with the technical and metrological requirements imposed on these equipment. Equipment that is not used according to the approval specifications or whose

metrological checks are expired produces records that have no probative value, which directly affects the legality of the report issued on the basis of them.

Therefore, the analysis of the legality and procedural compliance aspects of the electronic traffic contravention report cannot be restricted to the examination of the strictly procedural rules of the Contravention Code, but requires a systemic approach, which integrates both the provisions on the electronic form of the document, the special legislation on the electronic signature and the electronic document, the metrological regulations applicable to automatic detection equipment and European standards of the right to a fair trial. This systemic approach is the one that the present research follows in the following sections [12].

The legal recognition of the electronic form of the contravention report in Moldovan law represents a relatively recent legislative development, which occurred in the broader context of the policy of digitization of public services promoted by the Republic of Moldova in recent years, including within its European integration path. This evolution materialized by the introduction of paragraph (1^1) in Article 440 of the Contravention Code, a provision which, for the first time expressly and with a general vocation, enshrines the possibility for contravention facts to be established, examined and resolved in electronic form, together with the traditional written form on paper.

According to Art.440 para. (1^1), the contravention facts may be ascertained, examined and solved by the ascertaining agent in writing, on paper or in electronic form, or by converting the respective documentation into an easily accessible electronic format, including the use of the simple electronic signature, the concrete way of examining and solving the contravention cases in electronic form being established by Government decision. The text of the rule, although concise, produces legal effects of considerable magnitude, as it fundamentally modifies the procedural paradigm of the contravention finding, extended until the moment of its adoption exclusively on the written form on physical support.

From the perspective of the legislative technique, Art.440 para. (1^1) establishes three distinct and equivalent ways of carrying out the contravention procedure. The first is the classic written form, on paper, which still remains a valid option and is not replaced, but only completed by the other two. The second is the electronic form itself, in which the entire process of finding, examining and solving is carried out in a digital environment, without a physical medium [17]. The third is the hybrid form, consisting of converting classic documentation into an easily accessible electronic format, a pragmatic solution designed to facilitate the gradual transition from the traditional to the digital procedure, without imposing a sudden break with the existing administrative practice. This tripartition reflects a flexible and realistic approach of the legislator, which recognizes that the digitalization of the Moldovan public administration is not uniform and that not all competent authorities have, at the same time, the technical infrastructure necessary for the full implementation of the electronic form.

However, the rule contains two aspects of legislative technique that give rise to serious reservations from the perspective of legality and procedural safeguards. The first aspect concerns the standard of the electronic signature accepted for the authentication of the electronic report. Art.440 para. (1^1) refers exclusively to the simple electronic signature, without mentioning the advanced or qualified electronic signature, regulated by Law No.91/2014 on electronic signature and electronic document. However, in the hierarchy established by this particular law, the simple electronic signature represents the lowest level of security and authentication, not necessarily guaranteeing the certain iden-

tity of the signatory and the integrity of the document after signing. In a matter in which the act produces direct sanctioning consequences on the person, the acceptance of the simple electronic signature as a sufficient instrument for authenticating the contravention report appears as a questionable legislative option, likely to generate vulnerabilities both regarding the formal validity of the act and the possibility of its effective challenge by the offender. It is true that practical and financial arguments can justify this choice - the implementation of the qualified electronic signature at the level of all ascertaining agents involves significant costs and technical infrastructure, but the considerations of administrative efficiency cannot prevail, in a state of law, over the procedural guarantees of the sanctioned person.

The second problematic aspect concerns the delegation to the Government of the regulation of the concrete way of conducting the electronic contravention procedure. This delegation must be analyzed in the light of the principle of reserve of the organic law, enshrined in Art.72 para. (3) of the Constitution of the Republic of Moldova, according to which the organization and conduct of the contravention process is a matter reserved to the organic law. The Contravention Code itself is an organic law, adopted in compliance with this constitutional requirement. Allowing the Government to establish by decision – a normative act of lower rank than the organic law – the manner in which the contravention procedure is carried out in electronic form, including the related procedural guarantees, raises a serious problem of hierarchy of legal norms. The Constitutional Court of the Republic of Moldova has consistently held that the principle of legality obliges the legislator to clearly and predictably regulate the competence of the authorities in areas with a direct impact on the fundamental rights of the person, and the law must specify with sufficient clarity the extent of the discretion granted to the executive authorities, in order to provide the person with adequate protection against arbitrariness. The aspects related to the procedural rights of the offender, the conditions of validity of the electronic contravention act and the guarantees of the right to defense cannot be left, without raising problems of constitutionality, to the normative discretion of the Executive.

This vulnerability acquires an acute practical dimension given that, at the date of the present investigation, the Government decision provided by Art.440 para. (1^1) has either not been adopted in its full form or does not exhaustively cover all relevant procedural aspects of the electronic form, thus leaving a regulatory vacuum with direct consequences for administrative and judicial practice. Ascertaining agents applying the electronic procedure [4] in the absence of a complete and clear governmental framework, act in an area of legal uncertainty, with the risk that the issued documents will be annulled by the courts on the grounds of non-compliance with the legal process.

The special rule applicable in the field of road traffic is represented by Art.443^1 of the Contravention Code, which regulates the ascertainment of contraventions with the help of certified technical means or approved and metrologically verified technical means, operating in an automated regime. This norm mainly concerns the contraventions provided for in Art. 236 – Exceeding the speed of traffic, Art. 238 – Non-observance of light signals, and Art. 240 para. (2) of the Code, facts which, due to their instantaneous nature and the high frequency of their commit, are most effectively ascertained by automatic road surveillance systems [10]. Art. 443^1 introduces a procedure derogating from the general rule of direct finding, based on the self-notification of the ascertaining agent on the basis of the records produced by the approved technical equipment, and regulates the mechanism of identification of the driver of the vehicle when it cannot be made directly from the registration.

Corroboration of Art.440 para. (1¹) with Art.443¹ thus outlines the basic normative framework of the electronic report of finding the traffic contravention in Moldovan law. The critical analysis of this framework, from the perspective of formal legality, substantive legality and procedural compliance, is the subject of the following sections.

The formal legality of the traffic contravention report, regardless of the medium on which it is issued, paper or electronic, is conditioned by compliance with the imperative requirements of form and content established by the Contravention Code. This conditioning is not purely technical or administrative, but a substantial one: the formal requirements of the report are, in essence, procedural guarantees established in favor of the sanctioned person, the non-compliance of which entails, according to Art.445 of the Code, the nullity of the act and the impossibility of engaging contravention liability on its basis. The analysis of the formal legality of the electronic report therefore involves examining the compatibility of the electronic form with each of the mandatory requirements laid down by law, identifying the aspects where that compatibility is problematic and assessing the legal consequences of any inconsistencies.

Article 443 of the Contravention Code exhaustively lists the mandatory content elements of the report on the contravention. These include: the date and place of drawing up the document, the position, name and surname of the ascertaining agent, the identity data of the person in respect of whom the document is drawn up, the description of the contravention with the indication of the relevant circumstances, the legal norm violated, the evidence administered, the mention regarding the rights and obligations of the sanctioned person, his/her objections, if any, and the signatures of the ascertaining agent and the offender. Each of those elements fulfills a distinct legal function and contributes, as a whole, to ensuring that the contravention act is complete, authentic and effectively contestable.

The transposition of those requirements into the electronic form of the Minutes raises a number of specific difficulties on careful analysis. The first of these concerns the signature of the ascertaining agent. In the classic form, the handwritten signature of the ascertaining agent fulfills a double function: it certifies the identity of the author of the document and expresses the personal assumption of the recorded findings, engaging the official's liability for their accuracy and veracity. In electronic form, that function must be performed by the electronic signature, the type and level of security of which directly determines the degree of certainty as to the identity of the signatory and the integrity of the document. Or, as stated in the previous section, Art.440 para. (1¹) admits the simple electronic signature, which offers lower guarantees than those provided by the advanced or qualified electronic signature regulated by Law No.91/2014.

This legislative choice becomes even more problematic in the specific context of the automatic finding, regulated by Art.443¹, in which the report is not drawn up in the presence of the offender or as a result of the direct perception of the act by the ascertaining agent, but is generated on the basis of the recordings of an automated technical system. In this case, the electronic signature of the ascertaining agent no longer certifies the direct perception of the fact, but only the administrative validation of the technical data produced by the equipment. The signature guarantee function is therefore structurally diminished compared to the classic form, which makes the low level of security of the simple electronic signature all the more difficult to justify.

The second difficulty concerns the signature of the offender. In the classic procedure, the offender signs the report, confirming that he has become aware of its content, or refuses the signature, the refusal being recorded by the ascertaining agent. In elec-

tronic form, and in particular in the case of automatic finding, the offender is not present at the time of drawing up the document and therefore cannot sign the report at the time of its issuance. The Contravention Code provides, by Art.443 para. (8), the possibility of concluding the report in the absence of the offender, but this provision was designed for exceptional situations in the classic procedure, not as a general rule of automatic finding. Its extension to the electronic procedure, without explicit compensatory guarantees, may affect the right of the offender to know and challenge in real time the findings recorded in the act concerning him [15]. This issue has already generated jurisprudence at the national level: the Constitutional Court of the Republic of Moldova was notified of the exception of unconstitutionality of the text that allows the conclusion of the report in the absence of the person concerned, precisely in the context of a file on a contravention found with automated technical means, a sign that the normative tension identified in the present analysis is already reflected in the judicial practice.

The principle of legal equivalence between the electronic document and the paper document is enshrined in Law No.91/2014 on Electronic Signature and Electronic Document, which establishes that an electronic document signed with a qualified electronic signature has the same legal value as a document signed holographically on paper. This principle is essentially conditional: equivalence does not operate automatically and unconditionally for any electronic document, but only for those that meet the technical and legal requirements laid down by law, in particular the requirement of a qualified electronic signature.

The problem that arises in the context of the electronic contravention report is that Art.440 para. (1^1) admits the simple electronic signature, while Law No.91/2014 conditions full legal equivalence to the use of the qualified electronic signature. Therefore, an electronic contravention report signed with a simple electronic signature does not benefit, automatically and unconditionally, from the same legal value as the classic handwritten report. This inconsistency between the general rule – Law No.91/2014, and the special rule – Art.440 para. (1^1) of the Contravention Code – creates an area of legal ambiguity with direct practical consequences: the courts seized with appeals to the electronic minutes may reach divergent solutions regarding the legal value of the act, depending on the interpretation they adopt regarding the relationship between the two norms.

From the perspective of the principle of lex specialis derogat legi generali, it could be argued that Art.440 para. (1^1), as a special rule in contravention matters, derogates from the requirements of Law No.91/2014 and establishes its own regime of the electronic signature in the contravention procedure. This interpretation is technically possible, but it is not without risks: special rules derogating from general procedural safeguards are, by their nature, liable to be censured from the perspective of constitutionality and compatibility with European standards of the right to a fair trial. A derogation that reduces the level of security and authentication of the sanctioning act compared to the general standard applicable to electronic documents can only be justified by public interest arguments proportionate to its impact on the rights of the sanctioned person.

A distinct dimension of the formal legality of the electronic traffic contravention report is the requirements for homologation and metrological verification of the technical equipment used in the automatic finding. Art. 443^1 of the Contravention Code expressly conditions the legality of the automatic finding to the use of certified or approved and metrologically verified technical means, in accordance with the provisions of the applicable normative acts. That condition is not formal, but substantial: equipment not used in accordance with its technical approval specifications, whose metrological checks have

expired or which has not been correctly displayed at the time of the finding, produces records that have no probative value, with the direct consequence that the report issued on the basis of them is null and void.

The normative framework on the homologation and metrological verification of the equipment for the automatic ascertainment of traffic contraventions is regulated, in the Republic of Moldova, by secondary normative acts adopted on the basis of the Metrology Law No.19/2016, which establish the technical conditions that the measuring devices used for legal purposes, including in the contravention procedure, must meet. Compliance with the international standards of the International Organization of Legal Metrology is an essential benchmark in assessing the legality of the use of technical finding equipment, as these standards define the minimum requirements of accuracy, reliability and metrological traceability that measuring devices must meet in order for their results to be admissible as evidence in sanctioning proceedings.

From the perspective of the legality of the electronic report, the metrological issue has a particular significance: unlike the classic finding, in which the ascertaining agent can be heard on the conditions under which he used the technical means of ascertainment, in the case of automatic ascertainment, the information on the technical and metrological condition of the equipment at the time of registration is accessible to the offender only by express request addressed to the competent authority. However, the Contravention Code does not explicitly regulate the right of the offender to request and obtain this information during the appeal procedure, which generates the informational asymmetry identified as a central vulnerability of the current system, which the present research will return to in the analysis of procedural compliance.

If the formal legality of the electronic report concerns the conditions of form and content of the act, its substantive legality concerns a distinct and, from the perspective of the fundamental rights of the sanctioned person, more profound: to what extent does the content of the act reflect a certain factual reality, proven by legal and sufficient means of evidence, and under what conditions that reality may be called into question and overturned by the offender in the context of the challenge procedure. This dimension of legality is governed, in Moldovan contravention law, by two legal mechanisms with a direct impact on the procedural balance between the sanctioning authority and the sanctioned person: the presumption of veracity of the report and the presumption of liability of the vehicle owner established by Art.16[1] of the Contravention Code. Both mechanisms, designed in the logic of the classic declaration procedure, raise serious legal problems when applied in the context of automatic declaration and electronic report.

The report of finding the contravention benefits, in Moldovan law, from a presumption of relative truthfulness, according to which the findings recorded by the investigating officer are presumed to reflect the factual reality, until proven otherwise. That presumption, although not expressly set out in a single rule of the Contravention Code, is inferred from all the rules on the probative value of the report and from the settled case-law of the national courts, which have repeatedly held that the report constitutes the main means of proof in the contravention case and that it is the responsibility of the sanctioned person to overturn it.

The basis of this presumption lies in the special capacity of the ascertaining agent: he is a public official vested by law with powers of ascertainment, who acts in the exercise of his function and who, by his signature, personally assumes responsibility for the accuracy and veracity of the findings recorded. The presumption of veracity is, in essence, a presumption of good faith and professional competence of the civil servant, justified by

his special legal status and by the disciplinary, contravention or criminal liability that he may incur by recording false or inaccurate data in the official documents he draws up.

The fundamental problem that arises in the context of automatic finding is that this legal reason for the presumption of truthfulness is no longer fully applicable. The electronic report generated on the basis of the records of an automated technical system does not reflect the direct perception of the act by a human agent, but the result of a process of capturing, processing and interpreting the data carried out by a technical equipment, without the direct intervention of an official at the time of the finding. The ascertaining officer who subsequently validates the electronic report did not personally perceive the deed and can only guarantee, by his own signature, that the technical data produced by the equipment were correctly transposed into the contravention act, not that the equipment worked correctly, that the recording certainly concerns the vehicle and the alleged conduct or that the data were not altered in the process of transfer and processing.

Therefore, the extension of the presumption of veracity to the electronic automatic finding report operates, in reality, a double presumption: the presumption that the ascertaining agent acted correctly in validating the technical data and the presumption that the technical equipment functioned correctly at the time of registration. This double presumption, combined with the burden of proof to the contrary on the offender, creates a significant procedural imbalance, all the more serious as the sanctioned person does not have, within the current regulatory framework, clear and accessible procedural mechanisms through which to verify and challenge the technical functioning of the finding equipment. The Court seised of the challenge to such a report is, in turn, placed in the difficult position of assessing the legality and merits of an act whose evidentiary basis is of an exclusively technical nature, without having an explicit procedural framework allowing it to administer and evaluate the relevant technical evidence.

This issue is not specific exclusively to Moldovan law. The European Court of Human Rights has examined similar mechanisms for the automatic detection of traffic offences in its case-law and has held that the use of presumptions of fact or law in penalty matters is not, in principle, incompatible with Article 6(2) of the Convention, which guarantees the presumption of innocence, provided that such presumptions remain within reasonable limits, taking into account the seriousness of the stakes involved, and to persevere the effective right of defense of the accused person. The Court pointed out that States have a margin of discretion in establishing the presumptions applicable in contravention matters, but this margin is not unlimited and cannot lead to situations in which the sanctioned person is effectively deprived of the possibility of presenting his defence before an independent and impartial court. Applying these principles to the situation in Moldovan law, it can be concluded that the presumption of veracity of the electronic report, in the absence of clear procedural mechanisms allowing the offender access to the technical data of the equipment and their effective challenge, risks exceeding the limits of reasonableness imposed by European jurisprudence [6].

A second dimension of the material legality of the electronic traffic contravention report is the mechanism established by art. 16^1 of the Contravention Code, by which the contravention liability is extended, under certain conditions, to the owner of the vehicle with which the contravention was committed, regardless of his capacity as driver of the vehicle at the time of the act. According to this provision, the natural or legal person who owns the vehicle with which the contravention was committed is liable to contravention liability in the form of a fine if, within 60 working days from the receipt of the request provided for in Art. 443^1, he does not communicate the identity of the driver of the vehicle

at the time of the commission of the act.

This legal construction, although rational from the perspective of procedural efficiency and combating the traffic contravention phenomenon, raises a problem of principle of major constitutional significance: it operates, in essence, a derogation from the principle of personal liability, enshrined in Art.6 para. (1) of the Contravention Code, according to which only the person guilty of committing the contravention is liable to contravention liability. The owner of the vehicle can be held liable for the contravention not because he committed the contravention himself, but because he did not provide the authority with the information necessary to identify the actual offender. That liability is therefore indirect and objective, independent of the owner's guilt in relation to the contravention act itself.

The tension with the presumption of innocence, guaranteed by Article 21 of the Constitution of the Republic of Moldova and Article 6 paragraph 2 of the European Convention on Human Rights, is obvious: the mechanism established by Article 16^1 implicitly presumes that the owner of the vehicle is either the driver of the vehicle at the time of the crime, or at least able to provide the identity of the driver, thus placing on him the burden of proving that he is not in any of these situations. This reversal of the burden of proof, although not total - the owner can rebut the presumption by communicating the identity of the driver or by proving the objective impossibility of providing this information, affects the procedural balance to the detriment of the person concerned and can lead, in practice, to situations in which the owner of the vehicle is sanctioned without his guilt in relation to the contravention having been effectively established.

The European Court of Human Rights has examined similar mechanisms in cases concerning the liability of vehicle owners for automatically established traffic offences and has adopted a nuanced position: it has accepted, in principle, the compatibility of such mechanisms with Article 6 of the Convention, provided that the owner's obligation to provide information does not amount to an obligation to self-incriminate and that the owner has real and effective means of defence. In relation to the Moldovan regulation, a careful assessment is required of the extent to which the 60-working day period provided by Art. 16^1 is sufficient for the owner to identify and communicate the identity of the driver, especially in cases where the vehicle is used by several persons or where the owner is a legal entity with a large number of employees with access to the vehicles in the fleet.

A final dimension of substantive legality concerns the legal status of the recordings produced by automated technical equipment as a means of evidence in the contravention procedure. The Contravention Code regulates the admissible means of evidence in the contravention case by Art.420 et seq., listing among them: the report of finding, the statements of the parties, the statements of witnesses, documents, audio and video recordings, expert reports and other means provided by law. The recordings produced by automatic road surveillance systems fall, in principle, into the category of video recordings, but their technical particularities – automated nature, large volume of data, possibility of technical error 6 give them an evidentiary specificity that is not adequately reflected by the current regulatory framework.

The probative value of an automated recording depends, essentially, on the technical reliability of the equipment that produced it, on the integrity of the data in the storage and transfer process and on the correctness of their interpretation by the ascertaining agent. None of these conditions is explicitly and systematically verified in the current contravention procedure, which means that the court is put in a position to assess the probative value of the automatic registration without having a clear normative framework

indicating the relevant evaluation criteria and without the offender having had effective access to the technical information necessary to formulate documented objections. This regulatory gap represents, in our opinion, a systemic vulnerability of the current framework, which cannot be remedied by non-unitary judicial practice, but requires an express and coherent legislative intervention.

The comparative examination of the way in which other states have regulated the electronic traffic contravention report offers the Moldovan researcher not only a critical perspective on the legislative solutions adopted in legal systems with longer experience in the field, but also a repertoire of transferable good practices, insofar as they are compatible with the specifics of the domestic legal system. The comparative analysis does not aim at the mechanical import of foreign solutions, but at identifying the legal principles and mechanisms that have demonstrated efficiency in balancing the two apparently contradictory fundamental imperatives of any system of automatic finding of contraventions: the administrative efficiency of the sanctioning procedure and the effective guarantee of the rights of the sanctioned person.

France is one of the most mature European systems for automated traffic offence detection, with more than two decades of experience in operating an extensive fleet of fixed and mobile speed cameras. The French normative framework, structured around the Highway Code and the Code of Criminal Procedure, has solved the problem of identifying the driver of the vehicle through a mechanism similar to that established by Article 16^1 of the Moldovan Contravention Code, imposing on the owner of the vehicle the obligation to communicate the identity of the driver under penalty of a separate fine. The reference element of the French model, relevant for the present research, lies, however, not so much in the identification mechanism, but in the institutional and technical infrastructure that supports it: a centralised information system for the management of automatically ascertained traffic offences – Système de Contrôle Automatisé, which ensures the complete traceability of each recording, from the moment of capture to the issuance of the contravention act and its communication to the offender, and which allows the verification, at any time, of the technical and metrological condition of the finding equipment. That complete traceability of technical data represents, in the French system, the fundamental guarantee of the legality of electronic evidence and of procedural balance in the appeal procedure. The offender has access, through a dedicated electronic portal, to all the relevant technical data of the finding, including the photograph or video recording that substantiates the report, the identifier of the equipment and the date of its last metrological verification [21, p.135-146].

Romania has traveled, in the field of automatic ascertainment of traffic offences, a sinuous normative path, marked by numerous legislative changes and by an initially non-unitary jurisprudence on the validity of the reports issued based on the recordings of fixed speed cameras. The Romanian experience is relevant for the present research precisely because of the dysfunctions it generated, constituting a model to follow not so much through the solutions adopted, but through the negative lessons it offers. The lack of a clear regulatory framework on the approval of equipment, the absence of explicit regulations regarding the right of the offender to access the technical data of the finding and the uncertainty regarding the conditions of validity of the electronic report have generated, in Romanian judicial practice, a high rate of admission of appeals and a significant jurisprudential instability, with negative consequences both on the efficiency of the sanctioning system, and on citizens' trust in its legitimacy. The Romanian lesson for the Moldovan legislator is clear: the absence of a complete and coherent normative

framework does not produce administrative efficiency, but procedural chaos.

Estonia, recognized at European level as a model of e-government and digitization of public services, provides an example of the harmonious integration of the electronic contravention procedure into the broader architecture of digital administration. The specificity of the Estonian model lies in the fact that the digitalization of the contravention procedure has not been treated as an isolated issue of contravention law, but as a component of an integrated system of digital identity and electronic management of administrative documents, based on high cybersecurity standards and the use of the qualified electronic signature for all acts with legal effects on the rights of individuals. The electronic traffic offence report is, in the Estonian system, signed with a qualified electronic signature, stored in a secure government database and accessible to the offender through the national electronic services portal, which allows him to view the document, access the related technical evidence and file the appeal in electronic format, within the same integrated system. This systemic approach, based on high technical standards and real digital accessibility for the citizen, represents, in our opinion, the most relevant model for the Republic of Moldova, both in terms of its geographical and institutional proximity to the European space, and in terms of its compatibility with the digitization commitments assumed by the Republic of Moldova within the European integration process.

The analysis of the national regulatory framework, in conjunction with the comparative examination of the solutions adopted in the reference states, leads to the identification of a set of legislative interventions necessary to remedy the legal vulnerabilities found and to ensure a complete, coherent and compatible regulatory framework with the European standards of the right to a fair trial.

The first proposal aims to revise the standard of the electronic signature admitted for the authentication of the electronic contravention report. Art.440 para. (1^1) of the Contravention Code should be amended in the sense of imposing at least the advanced electronic signature, and preferably the qualified one, for the authentication of the electronic traffic contravention report. This amendment would ensure the full compatibility of the electronic contravention act with the requirements of Law No.91/2014 on the electronic signature and the electronic document, would guarantee the integrity and non-repudiation of the act and would eliminate the area of legal ambiguity generated by the current inconsistency between the two norms. The administrative costs of implementing the qualified electronic signature at the level of the ascertaining agents can be managed by staggering the implementation and by capitalizing on the digital identity infrastructure already existing in the Republic of Moldova.

The second proposal aims to expressly regulate the right of the offender to access the technical data of the automatic finding in the context of the appeal procedure. The Contravention Code should be supplemented by a provision explicitly recognising the right of the sanctioned person on the basis of an electronic report to request and obtain, within the time limit for appeal, the relevant technical information on the finding equipment used: the approval certificate, the metrological verification documents within the deadline, the unique identifier of the equipment and, where applicable, the operating logs of the system for the relevant period. This regulation would remedy the informational asymmetry identified as a central vulnerability of the current system and would ensure the offender the real, not just formal, possibility to prepare and defend his defense before the court.

The third proposal concerns the revision of the deadline for challenging the electronic traffic contravention report. The current term of 15 days provided by Article 448

of the Contravention Code, designed to challenge the classic reports, is insufficient for the preparation of a documented defense in the case of electronic reports based on automatic findings, which involves obtaining technical information, consulting a specialist and formulating specific objections. An extension of that period to at least 30 days, with the possibility of its suspension for the period during which the offender awaits the provision of the technical data requested to the authority, would ensure a fairer balance between the requirements of the effectiveness of the contravention procedure and the effective rights of defence of the sanctioned person.

The fourth proposal, of a structural nature, aims to develop an integrated regulatory framework on the electronic finding of traffic contraventions, which would bring together in a coherent normative act - either through a special law or through a separate chapter of the Contravention Code - all the rules applicable to this matter, currently dispersed in the Contravention Code, Law no. 91/2014, metrological legislation and secondary normative acts. This thematic codification would eliminate the legal uncertainty generated by the coexistence of dispersed and partially contradictory rules, would provide practitioners - ascertaining officers, lawyers, judges - with a clear and accessible regulatory framework and would strengthen the legitimacy of the system of automatic detection of traffic offences in the public perception, through regulatory transparency and legal predictability.

Conclusions. The research undertaken in the present study demonstrated that the electronic traffic contravention report represents, in the current Moldovan law, a legal institution in an early and incomplete regulatory stage, characterized by the significant gap between the reality of the contravention practice – in which the automatic detection of traffic contraventions is already a current operational tool – and the level of normative maturity of the legal framework that governs it, insufficiently articulated to respond coherently and completely to the requirements of legality and procedural compliance that a sanctioning procedure imposes in a state governed by the rule of law.

In the light of the above, the proposals for *a ferenda law* formulated in this study: 1) The revision of the electronic signature standard; 2) The urgent adoption of the Government decision provided by Art.440 para. (1^1); 3) The express regulation of the right of the offender to access the technical data of the finding; 4) The extension of the deadline for appealing and the elaboration of an integrated normative framework on the electronic recording of traffic offences. These are not mere technical amendments, but necessary and urgent legislative interventions to align the Moldovan contravention law with the constitutional and conventional requirements of the rule of law [7] and of the fair trial. The implementation of these proposals would also strengthen the public legitimacy of the automatic traffic offence detection system, the long-term effectiveness of which depends crucially on citizens' confidence in its legality and fairness.

Bibliographical references

1. ARAMĂ Elena. The principles of contravention law and their role in the activity of applying legal norms. In: National Law Review. 2015, No.7, pp.2-8. ISSN 1811-0770.
2. BRÎNZA Sergiu, STAT Vitalie. Treatise on Criminal Law. General Part. Vol. I. Chisinau: Central Printing House, 2017. 1128 p.
3. The Contravention Code of the Republic of Moldova No.218/2008, adopted on October 24, 2008, republished in the Official Gazette of the Republic of Moldova No.78-84 of 17 March 2017, Art.100, as subsequently amended and supplemented.
4. COJOCARU Vladislav. The electronic document in administrative procedures: aspects of legality. In: Moldovan Journal of International Law and International Relations. 2020,

No.2, pp. 45-58.
5. The Constitution of the Republic of Moldova, adopted on July 29, 1994. In: Official Gazette of the Republic of Moldova No.1 of 12 August 1994, as subsequently amended.
6. The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on November 4, 1950, ratified by the Republic of Moldova by Parliament Decision No.1298/1997. In: Official Gazette of the Republic of Moldova No.54-55 of 21 August 1997.
7. COSTACHI Gheorghe, HLIPCĂ Petru. The organization and functioning of power in the rule of law. Chisinau: Institute of History, State and Law of the Academy of Sciences, 2010. 304 p.
8. CREANGĂ Ion. Contravention liability — form of legal liability. In: Law and Life. 2017, No.3, pp. 4-9. ISSN 1810-309X.
9. Constitutional Court of the Republic of Moldova, Decision No.2 of January 30, 2018 on the exception of unconstitutionality of some provisions of the Contravention Code regarding the competence to examine contravention cases. In: Official Gazette of the Republic of Moldova No.83-93 of March 16, 2018.
10. GUȚULEAC Victor. Contravention Law. Chisinau: ULIM, 2006. 270 p.
11. GUȚULEAC Victor. Treatise on Contravention Law. Chisinau: S.n., 2009. 320 p. ISBN 978-9975-75-470-0.
12. GUȚULEAC Victor, NASTAS Andrei. Theoretical and practical aspects of the contravention process in the Republic of Moldova. In: National Law Review. 2018, No.4, pp.12-19. ISSN 1811-0770.
13. Decision of the Government of the Republic of Moldova No.357/2009 on the approval of the Road Traffic Regulation. In: Official Gazette of the Republic of Moldova No.92-93 of 06.05.2009, with subsequent amendments.
14. IORGOVAN Antonie. Treatise on Administrative Law. Vol. II. 4th Ed. Bucharest: All Beck, 2005. 612 p.
15. Law No.195/2024 on the Protection of Personal Data, as amended.
16. Law No.19/2016 on Metrology, adopted on March 4, 2016. In: Official Gazette of the Republic of Moldova No.100-105 of 22 April 2016, as amended.
17. Law No.91/2014 on Electronic Signature and Electronic Document, adopted on May 29, 2014. In: Official Gazette of the Republic of Moldova No.174-177 of July 4, 2014, as amended.
18. Law No.148/2023 on Access to Information of Public Interest, as amended.
19. Protocol No.7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Strasbourg on 22 November 1984.
20. Regulation (EU) No.910/2014 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS Regulation). In: Official Journal of the European Union L 257 of 28 August 2014.
21. VEDEL Georges. Administrative Law. Paris: Presses Universitaires de France, 1992. 894 p.

CZU 341.6:343.352 **DOI: https://doi.org/10.5281/zenodo.20826566**

ECtHR STANDARDS ON ENTRAPMENT AND THE FAIRNESS OF EVIDENCE IN CORRUPTION CASES

Alexandru FRUNZĂ,
PhD Candidate,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Student at "Alexandru Ioan Cuza" University of Iaşi,
Romania
ORCID: 0000-0001-9444-6561

Aliona FRUNZĂ,
Prosecutor,
Drochia Prosecutor's Office, Rîșcani Territorial Office,
Republic of Moldova
ORCID: 0000-0003-2088-7289

Abstract

The distinction between legitimate reporting and entrapment in corruption cases raises significant legal challenges, stemming from the need to maintain a balance between the effectiveness of investigative activities and respect for the right to a fair trial. The analysis of the standards developed in the case-law of the ECtHR highlights the essential role of the principle of fairness in the administration of evidence in preventing the artificial creation of criminal situations by authorities. The credibility of evidence depends on the passive nature of state intervention and on the existence of an autonomous criminal intent on the part of the investigated person.

The study emphasizes the importance of examining the specific circumstances of each case, including the manner in which contact was initiated, the existence of pressure or repeated solicitations, and the prior criminal predisposition of the individual. It identifies the criteria used in ECtHR jurisprudence to determine entrapment, as well as the distinction between merely providing an opportunity and inducing criminal conduct. At the same time, the analysis of the legal framework in the Republic of Moldova and Romania reveals legislative gaps and inconsistent practices, resulting from the absence of an explicit legal definition of entrapment and of clear normative criteria for its delimitation.

In this context, the paper underlines the need to strengthen the domestic legal framework in order to ensure predictability and coherence in the application of criminal law, as well as full alignment with European standards concerning the guarantee of a fair trial.

Keywords: corruption, entrapment, denunciation, fairness in the administration of evidence, fair trial, ECtHR case-law.

STANDARDELE CtEDO PRIVIND PROVOCAREA ȘI LOIALITATEA ADMINISTRĂRII PROBELOR ÎN CAZURILE DE CORUPȚIE

Abstract

Delimitarea dintre denunțul legitim și provocarea la săvârșirea infracțiunii în cauzele de corupție ridică dificultăți juridice semnificative, generate de necesitatea menținerii unui echilibru între eficiența activității investigative și respectarea dreptului la un proces echitabil. Analiza standardelor dezvoltate în jurisprudența CtEDO evidențiază rolul esențial al principiului loialității administrării probelor în prevenirea creării artificiale a situațiilor infracționale de către autorități. Credibilitatea probatoriului depinde de caracterul pasiv al intervenției organelor statului și de existența unei intenții infracționale autonome a persoanei investigate.

Studiul relevă importanța examinării circumstanțelor concrete ale fiecărei cauze, inclusiv a modului de

inițiere a contactului, a existenței unor presiuni sau solicitări repetate și a predispoziției infracționale anterioare. Sunt evidențiate criteriile utilizate în jurisprudența CtEDO pentru identificarea provocării, precum și diferențele dintre oferirea unei simple oportunități și determinarea conduitei infracționale. Totodată, analiza cadrului normativ din Republica Moldova și România indică existența unor lacune legislative și a unor practici neuniforme, determinate de lipsa unei definiții legale explicite a provocării și a unor criterii normative clare de delimitare.

În acest context, se subliniază necesitatea consolidării cadrului normativ intern, în vederea asigurării previzibilității și coerenței aplicării dreptului penal, precum și a alinierii depline la standardele europene privind garantarea procesului echitabil.

Cuvinte-cheie: corupție, provocare, denunț, loialitatea administrării probelor, proces echitabil, jurisprudența CtEDO.

Introduction. Combating corruption is an essential condition for the proper functioning of the rule of law and for maintaining public trust in authorities. In this context, the use of denunciations and special investigative techniques must be carried out in compliance with the principle of fairness in the administration of evidence. The distinction between legitimate reporting and entrapment raises particular difficulties, as exceeding the passive role of authorities may lead to the artificial creation of criminal conduct. The case-law of the ECtHR, reflected in cases such as *Teixeira de Castro* [14], *Ramanauskas* [12], *Khudobin* [11] and *Sandu* [13], has established criteria for identifying entrapment and for assessing the impact of such evidence on the fairness of criminal proceedings. Compliance with these standards is necessary to guarantee the right to a fair trial, as enshrined in Article 6 of the ECHR, as well as to prevent abuses in criminal investigations.

The fight against corruption and organized crime objectively justifies the use of special investigative methods, including infiltration techniques and undercover operations. However, the ECtHR has emphasized that the use of such techniques cannot be separated from the inherent risk of entrapment, which is why it is essential that they remain within clear and controllable limits.

In this regard, legal doctrine has underlined that "the state must detect crimes, not encourage their commission. Law enforcement authorities must identify offences in preparation or in the process of being committed, but not create new offences by inducing an innocent person to commit them" [5].

Methods and materials applied. In the context of analyzing the distinction between legitimate reporting and entrapment, the research requires the use of appropriate methods aimed at ensuring an objective and rigorous assessment of the applicable legal standards, given the complexity of state intervention and the risk of interference with the right to a fair trial, which calls for a systematic and coherent approach.

In preparing this study, both general scientific and legal research methods were employed. The comparative method enabled the analysis of the legal frameworks of the Republic of Moldova and Romania, in relation to the standards developed in the case-law of the ECtHR. The methods of analysis and synthesis were used to examine the relevant legal doctrine and case-law, including landmark judgments such as *Teixeira de Castro*, *Ramanauskas*, *Khudobin*, and *Sandu*. In addition, logical methods, including deduction and induction, were applied in formulating the conclusions and de lege ferenda proposals.

The materials used in the research include national legislation, ECtHR case-law, as well as doctrinal opinions and solutions from the practice of national courts, all of which were examined in order to identify legislative gaps and interpretative trends. The cumulative application of these methods made it possible to develop a coherent analytical framework regarding the distinction between reporting and entrapment and to assess

their impact on the fairness of criminal proceedings.

Discussions and results obtained. The phenomenon of corruption represents one of the most serious threats to the rule of law, affecting not only the proper functioning of public institutions, but also citizens' trust in justice and in public authorities. In efforts to combat this form of criminality, the institution of denunciation plays a central role, through which acts of active corruption can be investigated and sanctioned. However, the distinction between legitimate reporting and entrapment in the commission of a corruption offence raises a number of particularly complex legal and ethical issues.

In the meaning of the ECtHR case-law, entrapment exists where state agents or persons acting at their request do not confine themselves to the passive investigation of criminal activity, but exert an influence such as to incite an individual to commit an offence which he or she would not have committed without such intervention, in order to make it possible to establish the offence and initiate criminal proceedings [6, point. 256].

Such conduct is contrary to the principle of fairness in the administration of evidence and undermines the right to a fair trial as guaranteed by Article 6 of the ECHR [4]. At the same time, the absence of clear criteria for distinguishing between reporting and entrapment has led, in judicial practice, to contradictory solutions and to the exclusion of essential evidence.

The ECtHR has consistently established the principle of fairness in the administration of evidence as an essential dimension of the right to a fair trial, guaranteed by Article 6 of the ECHR. According to this principle, state authorities are required to conduct investigative activities in a fair and proper manner, without artificially creating criminal situations and limiting themselves strictly to the detection of already existing offences. Exceeding these limits – by inciting or inducing a person to commit an offence which, in the absence of state intervention, he or she would not have committed – constitutes a form of entrapment that leads to the exclusion of the evidence thus obtained. The ECtHR has expressly emphasized that the role of law enforcement authorities is to carry out passive investigations and to collect evidence fairly, without substituting the individual's will through pressure, insistence, or repeated solicitations.

The admissibility of using informants, collaborators, and undercover agents is not unconditional. The Court has held that reliance on sources such as confidential informants may be compatible with the Convention at the investigative stage; however, the subsequent use of the results of such operations to justify a conviction raises distinct issues of fairness. Consequently, such measures are permissible only if they are accompanied by adequate and sufficient safeguards against abuse, in particular through the existence of clear and foreseeable procedures governing the authorization, implementation, and supervision of undercover operations.

The ECtHR judgment in *Teixeira de Castro v. Portugal* [14] constitutes a fundamental benchmark for defining the concept of entrapment. In this case, the Court found that undercover police officers had incited the applicant to supply drugs, even though he had not previously demonstrated any criminal predisposition. The European Court held that Article 6 of the ECHR had been violated, as the authorities had artificially created the offence, thereby undermining the fairness of the criminal proceedings. Through this judgment, the Court clearly distinguished between legitimate undercover investigative activity and prohibited entrapment, holding that the state cannot generate criminal situations solely in order to secure subsequent convictions.

The ECtHR draws a distinction between creating an opportunity to commit an offence and inducing its commission. The actions of authorities are permissible when they

merely provide an opportunity for the manifestation of an already existing criminal intent; however, they amount to entrapment when they themselves generate the criminal decision. The decisive element is not the participation of undercover agents, but the origin of the criminal intent.

Contemporary legal doctrine has noted that undercover operations raise difficulties not only from an evidentiary perspective, but also in terms of the legitimacy of state intervention in the criminal sphere.

Thus, Bruce L. Hay [8] emphasizes that the specific nature of such operations lies in the fact that authorities do not merely limit themselves to detecting offences, but may actively participate in their creation or facilitation, which raises serious issues of legitimacy. In his view, these operations fulfill two distinct functions: an informational one, aimed at identifying individuals predisposed to commit offences, and a preventive one, consisting in deterring criminal behavior by creating uncertainty as to the authenticity of criminal opportunities.

However, these two functions are not fully compatible, as investigative effectiveness requires the secrecy of the operation, whereas preventive effectiveness, on the contrary, implies public awareness of the existence of such methods.

An essential contribution of the author lies in highlighting the risk that such operations may lead to the erroneous identification of individuals who, in the absence of state intervention, would not have committed offences, thereby calling into question the fairness of their punishment. From this perspective, the undercover operation appears as a genuine behavioral test, in which the individual's reaction to a stimulus created by the authorities is used to infer his or her predisposition to commit offences [8].

In the same vein, Jonas Haeg [7] analyzes entrapment from the perspective of manipulation, showing that the state agent acts on the basis of concealed intentions, aiming not only to elicit a reaction from the targeted individual, but to induce that person to commit an offence for the purpose of subsequent punishment.

From this perspective, the problem does not lie solely in the fact that the state creates or stimulates criminal behavior, but also in the fact that the punishment subsequently imposed completes a prior manipulative conduct. Even if the entrapped person may remain culpable, their sanctioning becomes questionable in terms of the moral and legal legitimacy of state intervention.

A relevant thesis derived from this analysis is that the issue of entrapment cannot be explained solely by the absence of the individual's guilt, since, from a subjective perspective, the person reacts to a criminal opportunity similar to that created by a private individual. The legal difficulty, in reality, stems from the fact that the state, through its agents, actively intervenes in shaping the criminal situation and selectively determines who ends up committing the offence, which raises serious concerns regarding the legitimacy and fairness of the application of criminal law [7].

The ECtHR judgment in *Ramanauskas v. Lithuania* [12] brings to the forefront the role of informants in the investigation of corruption offences. The Court held that the involvement of informants is legitimate only insofar as they do not exert active inducement on the targeted individual. The ECtHR found that, in the absence of objective indications of prior criminal predisposition and where the person is subjected to repeated solicitations, the actions of the authorities and their collaborators amount to entrapment. This case-law establishes two fundamental criteria: the existence of prior criminal predisposition and the intensity of the pressure exerted by state agents or informants acting under their supervision.

In this context, the essential legal distinction between an undercover agent and an agent provocateur lies in the origin of the criminal intent. An undercover agent observes and documents an already existing criminal decision, whereas an agent provocateur induces its emergence. Therefore, it is not the participation of authorities in the material act that is prohibited, but the influence exerted on the formation of the criminal intent.

A particularly relevant thesis emerging from doctrinal analysis is that the issue of entrapment cannot be explained by the absence of the individual's guilt, since, from a subjective perspective, the person reacts to a criminal opportunity similar to that created by a private individual. In reality, the legal difficulty stems from the fact that the state, through its agents, actively intervenes in shaping the criminal situation and selectively determines who ultimately commits the offence, which raises serious concerns regarding the legitimacy and fairness of the application of criminal law [17].

A distinction must be made between situations in which the informant acts under the instructions and control of the authorities (in which case the standards on entrapment apply in full) and those in which the initiative belongs to a private individual who did not act under state control; in the latter case, the issue is examined primarily under the general rules governing the administration of evidence, rather than as a typical problem of police entrapment [6, point 251].

In the ECtHR judgment in Khudobin v. Russia [11], the Court found that state agents had exerted concrete forms of excessive pressure, through threats and repeated solicitations, until the applicant yielded and committed the offence. This conduct transformed the investigation into a strategy of coercion, incompatible with the principle of a fair trial. Accordingly, the Court reaffirmed that not only the direct initiative to instigate the commission of an offence, but also persistent insistence and continuous pressure may constitute elements of prohibited entrapment.

In the same vein, legal doctrine has emphasized that, in the context of corruption offences, the offering of a sum of money by an undercover investigator to the targeted individual exceeds the limits of passive conduct and constitutes a form of entrapment, as it directly influences the formation or consolidation of the criminal intent. Entrapment is considered to exist where there are no prior reasonable suspicions, the state agent exceeds the role of a passive observer, and there is a causal link between the agent's conduct and the commission of the offence, thereby transforming the investigative activity into a mechanism for creating the criminal act [11].

The ECtHR judgment in *Sandu v. Moldova* [13] represents a direct application of ECtHR standards at the national level. The Court emphasized that the use of undercover agents and informants in the Republic of Moldova must comply with the criteria already established in its case-law. It found that evidence obtained through the active incitement of the defendant cannot serve as a basis for a conviction, as such a practice would undermine the fairness of the criminal proceedings. Through this decision, the ECtHR highlighted the deficiencies of the national legal framework and imposed on national courts the obligation to apply European standards directly in matters of entrapment.

The consistent case-law of the ECtHR shows that the issue of entrapment is not merely a matter of evaluating evidence, but one of procedural fairness. Once the defendant raises the issue of entrapment, national courts are required to examine this claim effectively, by assessing the circumstances of the investigative operation, the manner of its authorization, the role of undercover agents, and the conduct of the informant. The lack of a genuine and thorough analysis of this defence in itself leads to a violation of Article 6 of the ECHR, regardless of the strength of the evidence obtained [9; 10].

By correlating the substantive and procedural standards developed in its case-law, the Court has shaped a genuine legal test for judicial entrapment.

The analysis of ECtHR case-law reveals a set of cumulative criteria that allow for the identification of situations of judicial entrapment:

– The absence of an objective criminal predisposition of the targeted individual prior to contact with state agents or their collaborators;

– The existence of repeated solicitations or pressures exceeding the passive role of the authorities;

– The criminal initiative originating primarily from state agents or from informants acting under their control;

– The lack of preparatory acts demonstrating the individual's autonomous intent to commit the offence;

– The use of state resources for the purpose of artificially creating the offence.

The cumulative fulfillment of these elements leads to the conclusion that judicial entrapment has occurred, and the use of evidence thus obtained compromises the fairness of the criminal proceedings as a whole, within the meaning of Article 6 of the ECHR. In such a situation, the violation cannot be considered remedied by a formal evaluation of the evidence or by upholding a conviction based on a reconstruction of evidence that preserves, directly or indirectly, the effects of the entrapment operation. The ECtHR standard requires that no conviction be based on an offence artificially created through the intervention of the authorities or their collaborators. The concrete procedural remedy (exclusion of evidence, termination of proceedings, acquittal, or other solutions provided by domestic law) must be effective and capable of removing the consequences of entrapment, ensuring that the individual is not convicted for an offence whose criminal initiative was generated by the state.

In order to ensure the effective application of ECtHR standards, the analysis of entrapment must be carried out through a structured examination of the evidentiary material. The court is required to examine, in sequence:

1) The existence of prior objective indications of criminal predisposition;

2) The manner in which contact between the agent/informant and the investigated person was initiated;

3) The development of the interaction and the possible existence of insistence or pressure;

4) The actual role of state authorities in determining the criminal decision;

5) Whether the offence would have been committed in the absence of state intervention.

Only by following these steps can it be determined whether the operation remained passive or, on the contrary, constituted judicial entrapment.

At the national level, Article 94 para. (1) point 11) of the Code of Criminal Procedure provides that "in criminal proceedings, the following shall not be admissible as evidence and shall therefore be excluded from the case file, may not be presented before the court, and may not serve as a basis for a judgment or other judicial decisions: ... data obtained through the provocation, facilitation, or encouragement of a person to commit an offence" [2].

In the same spirit, Article 36 para. (6) of Law No.59/2012 on special investigative activity expressly provides that an undercover investigator is prohibited from provoking the commission of offences [16]. This provision confirms the obligation of the state to limit itself to the detection and documentation of criminal acts, without actively intervening in

their determination. Therefore, the prohibition of entrapment is not only a requirement derived from ECtHR case-law, but also a positive rule of domestic law, which must be interpreted in conjunction with the principle of fairness in the administration of evidence.

In Romania, entrapment is considered a form of coercion and is prohibited under Article 101 para. (3) of the Code of Criminal Procedure, according to which: "... judicial authorities or other persons acting on their behalf are prohibited from provoking a person to commit or to continue committing a criminal offence for the purpose of obtaining evidence" [3]. The notion includes both direct incitement and forms of deceit or misleading suggestions. Entrapment may arise when state agents, including undercover investigators, exceed the legal framework.

Despite the prohibition established by the legislator regarding the entrapment of a person into committing an offence provided by criminal law, the legal frameworks of both states are affected by legislative gaps. In Romania, although the regulation exists at the procedural level, the Criminal Code does not define the constituent elements of entrapment nor does it establish the legal consequences of such conduct. In the Republic of Moldova, the situation is even more deficient, as the Code of Criminal Procedure provides only for the inadmissibility of evidence obtained through entrapment, without the substantive criminal law defining or expressly sanctioning this form of conduct.

The meaning of the term "entrapment" is likewise not defined in the criminal legislation of either state. Moreover, the Romanian Code of Criminal Procedure has been subject to considerable doctrinal criticism, with certain inconsistencies in its regulation being highlighted. Although it expressly enshrines the principle of fairness in the administration of evidence, prohibiting entrapment in the commission of offences, at the same time the same Code establishes less conventional methods of criminal investigation, such as allowing state agents to participate in authorized activities which would ordinarily be unlawful, for the purpose of gathering evidence, including by carrying out acts closely resembling the material elements of a corruption offence [18].

At the same time, despite the fact that the criminal legislation of the Republic of Moldova criminalizes the "demanding, accepting or receiving, personally or through an intermediary, by a public official or a foreign public official, of goods, services, privileges or advantages in any form not due to them, for themselves or for another person, or the acceptance of an offer or promise thereof, in order to perform or refrain from performing, delay or expedite an act in the exercise of their duties or contrary thereto", there is no definition or clear delimitation of entrapment in relation to the "acceptance" of such goods, services, privileges or advantages, as distinct from conduct that may be so qualified in cases where a proposal did not produce the specific effect of entrapment and did not determine the criminal conduct of the accused.

The identified legislative gap creates an interpretative space and leads to non-uniform solutions in judicial practice, thereby affecting the predictability and coherence of criminal law. In the absence of clear regulations, courts have been compelled to rely on ECtHR case-law, as well as on their own interpretations, in order to define the boundaries of the concept of entrapment.

In turn, the Plenum of the Supreme Court of Justice, relying on ECtHR case-law, emphasizes that: "the notion of judicial entrapment arises whenever the criminal investigation authorities go beyond the limits of mere passive observation of criminal conduct and exert a direct or indirect influence on the targeted individual, capable of inducing that person to commit an offence which, in the absence of such intervention, would not have occurred, the purpose of such conduct being to establish the alleged offence, to ob-

tain evidence, and to initiate criminal proceedings" [15].

Consequently, the notion of entrapment presupposes the existence of active actions by the authorities that create and direct the criminal situation, which leads to a serious violation of the principle of a fair trial enshrined in Article 6 of the ECHR and entails the exclusion of evidence obtained through such means.

In the ECtHR's case-law, the finding of entrapment does not lead only to the exclusion of evidence, but also affects the overall fairness of the criminal proceedings. A conviction based on an artificially created offence is, by its very nature, incompatible with Article 6 of the ECHR, even if other evidence might indicate guilt.

Accordingly, entrapment in the commission of an offence renders the evidence obtained unlawful, and such evidence must be excluded from the criminal proceedings. Moreover, legal doctrine has argued that, in such situations, the person should not be convicted, since criminal liability is determined by the intervention of the authorities rather than by the free and autonomous manifestation of the offender's will. Such an approach highlights that the issue of entrapment does not concern solely the legality of obtaining evidence, but also the very legitimacy of the state's punitive response [18].

Moreover, any allegation that the defendant was induced through entrapment to commit acts of corruption must be examined with particular rigor by the courts, with the burden resting on the investigative authorities and the prosecution to prove, beyond any reasonable doubt, the absence of such a situation. The court is required to verify whether the actions of the person acting as an agent provocateur produced the specific effect of entrapment - namely, whether they determined the defendant's criminal conduct - and to establish whether the offence would have been committed in the absence of such intervention, in accordance with the standards developed in the ECtHR's case-law on the right to a fair trial [15].

In analyzing the phenomenon of entrapment in corruption offences, it is essential to identify the source of the initiative to commit such acts. If the initiative for committing bribery (either giving or receiving a bribe) originates from the agent provocateur, the situation generally falls within the scope of entrapment of an offence provided by criminal law. Conversely, when the initiative for corrupt conduct does not originate from the agent provocateur, it cannot, in principle, be considered entrapment within the meaning of criminal law.

In the field of corruption offences, entrapment arises when the initiative belongs to the agent provocateur. This may manifest, on the one hand, through inducing the targeted person to request, accept, or receive, directly or through an intermediary, goods, services, privileges, or other undue advantages, for themselves or for another person, in exchange for performing, failing to perform, delaying, or expediting an act related to the exercise of official duties or even contrary thereto, including in the context of manipulating sporting events subject to betting. On the other hand, entrapment also exists where the initiative concerns the promise, offering, or giving, directly or through an intermediary, of undue benefits to the person to be corrupted, for themselves or for another person, with the purpose of influencing that person to act or refrain from acting, to delay or expedite the performance of an official duty, or to carry out an act contrary thereto.

In such situations, the central issue is not only the existence of the material act of corruption, but also the origin of the criminal intent and the decisive role of the agent provocateur in shaping the conduct. These elements cannot be inferred through presumptions or through a formal reading of the facts, but must be established by objective data regarding the initiation of contact, the content of the interactions, and the degree

of influence exerted on the targeted person. In the absence of a rigorous demonstration that the offence would have been committed even without the intervention of the agent provocateur, the assessment of guilt becomes uncertain, and the general rules of criminal procedure regarding the standard of proof and the interpretation of doubt become fully applicable.

According to Article 8 para. (3) of the Criminal Procedure Code: "conclusions regarding a person's guilt in the commission of an offence cannot be based on assumptions. All doubts in proving the accusation that cannot be removed, under the conditions of this Code, shall be interpreted in favor of the suspect, the accused, or the defendant" [2].

However, the current legal framework does not provide an explicit regulation of entrapment as a legal institution, which generates uncertainty in judicial practice and leads to non-uniform solutions. Thus, in the absence of a legal definition and clear criteria for its identification, courts are compelled to rely exclusively on ECtHR case-law, which reduces the predictability and coherence of the application of criminal law.

Legal doctrine has advocated for the legislative recognition of entrapment as a ground excluding the criminal nature of the act. In this regard, it has been proposed to amend Article 35 of the Criminal Code by including entrapment among the causes that remove criminal liability, as well as to regulate it expressly in the Criminal Code through a distinct provision. According to this approach, an act should not be considered a criminal offence where the person acted as a result of artificial inducement by another individual, in circumstances where the initiative belongs to the agent provocateur, and the apparent offender did not previously display criminal intent and was unaware of the induced nature of his or her conduct. In such circumstances, only an appearance of guilt is created, intended to be attributed to the entrapped person and to prejudice his or her interests [1].

In this regard, the proposed legislative intervention aims to regulate the effects of entrapment on the liability of the person who committed the offence under its influence, establishing that such a person cannot be held criminally liable.

However, in order to ensure a comprehensive legal framework, it is also necessary for the conduct of the agent provocateur to be expressly sanctioned by criminal law, since at present it is either ambiguously subsumed under certain offences or contraventions, or remains unpunished.

At the same time, the cited author considers it appropriate to introduce an autonomous offence for the conduct of the agent provocateur, by incorporating into the Criminal Code a specific provision concerning the artificial inducement to commit an offence provided by criminal law. According to this approach, the initiation of criminal conduct by a person who intends to attribute it to another individual - who, prior to the interaction, did not display any criminal predisposition and was unaware of the induced nature of his or her actions - should be subject to sanction. Such a situation involves the deliberate creation of an appearance of guilt with the purpose of prejudicing the interests of the entrapped person, insofar as the conduct does not meet the elements of other offences already provided by law. For such conduct, the application of criminal sanctions is envisaged, including a fine, community service, or imprisonment [1].

The adoption of such legislative amendments would contribute to the creation of a coherent and foreseeable legal framework, in which the boundaries between reporting and entrapment are clearly defined, and the application of criminal liability is carried out in a fair and proportionate manner.

In this logic, it is confirmed that undercover operations cannot be assessed solely in terms of their effectiveness in combating crime, but must also be examined from the per-

spective of the risks of abuse and their impact on the fundamental principles of criminal proceedings. The legitimacy of the state's response depends not only on the objective of combating corruption, but also on the means by which this objective is pursued, since the rule of law cannot tolerate the transformation of investigative activity into a mechanism for the artificial creation of offences.

Conclusions. The analysis carried out highlights that the distinction between legitimate reporting and entrapment represents one of the most sensitive and complex issues in the field of combating corruption. The consistent case-law of the ECtHR has established a clear standard: the state may detect and document offences, but it may not create them through active interventions aimed at artificially generating criminal intent. From the correlation of relevant judgments emerges a genuine legal test of entrapment, based on the existence of prior criminal predisposition, the origin of the criminal initiative, the intensity of the pressures exerted, and the autonomy of the will of the investigated person.

The research demonstrates that, although the legislation of the Republic of Moldova and Romania prohibits the use of evidence obtained through entrapment, the current regulation is incomplete and lacks an explicit normative definition of the institution. This gap generates legal uncertainty, non-uniform judicial practices, and an excessive reliance on ECtHR case-law to delineate the permissible limits of investigative activity.

At the same time, the findings of the study confirm that the issue of entrapment cannot be reduced solely to the analysis of the individual's guilt, but must be assessed in relation to the legitimacy of state intervention in shaping the criminal situation. To the extent that authorities exceed their role as passive observers and actively intervene in determining the conduct, the state's punitive response becomes questionable in terms of fairness and compliance with the requirements of Article 6 of the ECHR.

In this context, legislative intervention is necessary in order to introduce a legal definition of entrapment, to establish normative criteria for distinguishing between reporting and the artificial inducement of criminal conduct, and to expressly regulate its effects on criminal liability.

De lege ferenda, it is considered appropriate to recognize entrapment as a ground for excluding criminal liability for the person artificially induced, as well as to establish an autonomous offence for the conduct of the agent provocateur, insofar as such conduct deliberately creates an appearance of guilt. At the same time, it is necessary to strengthen judicial control over special investigative techniques and to clarify the burden of proof regarding the absence of entrapment, which should lie exclusively with the prosecution.

In essence, compliance with ECtHR standards does not limit the effectiveness of combating corruption, but rather confers legitimacy upon it. The balance between the efficiency of criminal repression and the protection of fundamental rights represents an indispensable condition for maintaining the moral and legal authority of the rule of law.

Bibliographical reference

1. Brînză C. Răspunderea penală pentru luarea de mită și darea de mită. Doctor of Law thesis. Chișinău, 2021. 351 p. Available: http://www.cnaa.md/files/theses/2021/57497/cristian_brinza_thesis.pdf (cited 26.02.2026).
2. Criminal Procedure Code of the Republic of Moldova No.122 of 14 March 2003. In: Official Gazette of the Republic of Moldova, 2003, No.104-110.
3. Criminal Procedure Code of Romania No.135 of 1 July 2010. In: Official Gazette of Romania, 2010, No.486.

4. Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4 November 1950.
5. Copețchi S. Provocarea infracțiunii în contextul măsurilor speciale de investigație. In: Journal of the National Institute of Justice, 2017, No.2 (41), pp. 26-32. Available: https://msuir.usm.md/server/api/core/bitstreams/a03ef700-2bab-4cce-a41c-a83e5aab8b87/content (cited 24.03.2026).
6. European Court of Human Rights. Guide on Article 6 of the European Convention on Human Rights – Right to a Fair Trial (criminal aspect).
7. Haeg J. Entrapment and Manipulation. In: Res Publica, 2022, Vol. 28 (4), pp.1-21. Available: https://philpapers.org/archive/HAEEAM.pdf?utm (cited 05.02.2026).
8. Hay Bruce L. Sting Operations, Undercover Agents, and Entrapment. In: Missouri Law Review, 2005, Vol. 70 (2), pp.1-45. Available: https://dash.harvard.edu/server/api/core/bitstreams/7312037d-4602-6bd4-e053-0100007fdf3b/content (cited 05.02.2026).
9. Judgment of the European Court of Human Rights in the case of Bannikova v. Russia, 4 February 2011.
10. Judgment of the European Court of Human Rights in the case of Edwards and Lewis v. The United Kingdom, 27 October 2004.
11. Judgment of the European Court of Human Rights in the case of Khudobin v. Russia, 26 October 2010.
12. Judgment of the European Court of Human Rights in the case of Ramanauskas v. Lithuania, 5 February 2008.
13. Judgment of the European Court of Human Rights in the case of Sandu v. Moldova, 11 February 2014.
14. Judgment of the European Court of Human Rights in the case of Teixeira de Castro v. Portugal, 9 June 1998.
15. Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova on the application of legislation concerning criminal liability for corruption offences No.11 of 22 December 2014, as amended by the Decision of the Plenum of the Supreme Court of Justice No.8 of 15 May 2017.
16. Law on Special Investigation Activity No.59 of 29 March 2022. In: Official Gazette of the Republic of Moldova, 2022, No.113-118.
17. McAdams Richard H. A Tempting State: The Political Economy of Entrapment. In: Illinois Law & Economics Research Paper No. LE05-019, Illinois Public Law Research Paper No.05-13, 2005, pp.3-57. Available: http://dx.doi.org/10.2139/ssrn.797964 (cited 10.03.2026).
18. Roibu M. Entrapment in Case of Corruption Offenses – Breach of the Right to a Fair Trial. In: Journal of Eastern European Criminal Law, 2014, Vol. I (2), pp.93-100. Available: https://jeecl.ro/index.php/jeecl/article/view/1732/1668 (cited 17.03.2026).

CZU 343.98:504.06 **DOI: https://doi.org/10.5281/zenodo.20826655**

ASSESSMENT OF THE LEGAL FRAMEWORK OF THE STATE-PROTECTED AREAS AND VULNERABILITIES THAT FACILITATE ENVIRONMENTAL CRIME

Mihaela COJOCARU (BEJENARI),
PhD Candidate, University Assistant,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3118-1225

Regina FASOLA,
PhD, Senior Researcher,
Laboratory of Natural and Anthropogenic Ecosystems,
Institute of Ecology and Geography, Moldova State University
ORCID: 0000-0003-2968-5210

Abstract

This scientific study aims to assess the legal framework applicable to protected natural areas from the perspective of the effectiveness of legal norms designed to prevent, detect and sanction unlawful acts that affect protected natural values. The study is based on the premise that protected areas represent spaces subject to a special legal regime, within which biodiversity conservation, the protection of natural habitats and the maintenance of ecosystem balance require coherent regulatory mechanisms, functional institutions and effective instruments of administrative and judicial control.

In this context, the study examines normative, institutional and practical vulnerabilities that may facilitate environmental crime, including the fragmentation of regulations, the insufficient delimitation of the competences of public authorities, deficiencies in the monitoring system, the sometimes formal nature of ecological control, as well as the inconsistent application of legal liability.

The purpose of the research is to identify the dysfunctions that reduce the effectiveness of the legal protection of protected natural areas and to outline directions for strengthening the mechanisms aimed at preventing and combating environmental crime. The study highlights the need for an integrated, interdisciplinary and systemic approach, by correlating environmental law norms with the instruments of administrative, contraventional and criminal law, in order to ensure the real, effective and sustainable protection of natural heritage.

Keywords: state-protected natural areas, environmental crime, biodiversity, legal vulnerabilities, legal liability, environmental protection, ecological conservation.

EVALUAREA CADRULUI JURIDIC AL ARIILOR PROTEJATE DE STAT ȘI A VULNERABILITĂȚILOR CARE FACILITEAZĂ CRIMINALITATEA DE MEDIU

Abstract

Prezentul demers științific are ca obiect evaluarea cadrului juridic incident ariilor naturale protejate, din perspectiva eficienței normelor juridice destinate prevenirii, constatării și sancționării faptelor ilicite care aduc atingere valorilor naturale ocrotite. Studiul pornește de la premisa că ariile protejate constituie spații cu regim juridic special, în cadrul cărora conservarea biodiversității, protecția habitatelor naturale și menținerea echilibrului ecosistemic reclamă mecanisme normative coerente, instituții funcționale și instrumente eficiente de control administrativ și jurisdicțional. În acest context, sunt examinate vulnerabilitățile de ordin normativ, instituțional și aplicativ care pot favoriza manifestarea criminalității de mediu, între care se evidențiază fragmentarea reglementărilor, insuficienta delimitare a competențelor autorităților, carențele sistemului de moni-

torizare, caracterul uneori formal al controlului ecologic, precum și aplicarea neunitară a răspunderii juridice.

Finalitatea cercetării constă în identificarea disfuncționalităților care diminuează eficacitatea protecției juridice a ariilor naturale protejate și în conturarea unor direcții de consolidare a mecanismelor de prevenire și combatere a criminalității de mediu. Demersul relevă necesitatea unei abordări integrate, interdisciplinare și sistemice, prin corelarea normelor de drept al mediului cu instrumentele dreptului administrativ, contravențional și penal, în vederea asigurării unei protecții reale, efective și durabile a patrimoniului natural.

Cuvinte-cheie: arii naturale protejate de stat, criminalitate de mediu, biodiversitate, vulnerabilități juridice, răspundere juridică, protecția mediului, conservare ecologică.

Introduction. In the current context, the relationship between human activity and the natural environment has become one of society's essential concerns. Economic development can no longer be viewed separately from environmental protection, as it is necessary to strike a balance between the use of natural resources and their conservation for future generations. Therefore, the analysis of the legal regime of protected areas makes it possible to highlight the way in which environmental relations influence the formation and evolution of constitutional and legal norms. At the same time, such research reveals the capacity of law to effectively regulate the specific relations between society and nature, thereby contributing to the consolidation of a sustainable development model.

The benefits provided by nature often constitute effective and sustainable solutions for meeting human needs. For this reason, the integration of norms concerning ecosystem protection into environmental management policies represents an essential condition for balanced development.

Investment in a functional environment is often regarded as a luxury. This perception is largely determined by the lack of clarity of regulations concerning ecosystem protection and by the tendency to treat natural resources as being available indefinitely. Consequently, numerous public or economic decisions are adopted without an adequate assessment of their environmental effects. However, the excessive use of limited natural resources inevitably leads to the degradation of natural capital, affecting both ecological balance and the quality of present and future life.

Protected areas are the backbone of nature conservation; however, this type of "protection regime" is not sufficient to address the significant pressures affecting European biodiversity, such as semi-natural habitats and species whose survival ranges are linked to agricultural land lost through the abandonment of farming practices or the intensification of agriculture; large-scale alteration of freshwater systems; pollution; and unsustainable marine fishing. The clear benefits of protected areas can only be sustained through broader social changes.

By their nature and purpose, they constitute areas subject to a special legal regime, within which the public interest in environmental protection prevails over certain forms of economic exploitation that are incompatible with conservation objectives. In this regard, the protection of protected natural areas cannot be reduced to mere normative recognition; rather, it requires the existence of a coherent system of regulation, administration, monitoring, control and sanctioning of acts that affect the protected natural values.

The improper exploitation of the environment has caused many components of nature to lose their former appearance, qualities and structure; therefore, it became necessary to implement the concept of sustainable development.

The establishment of the protected areas fund aims to ensure the protection and conservation of natural objects and complexes for the present generation and future generations. This requires the effective correlation of organizational, economic and educa-

tional measures with potential anthropogenic activities, ensured through legal norms.

The topicality of the subject is determined by the intensification of pressures exerted on natural heritage, including illegal logging, poaching, unauthorized exploitation of natural resources, pollution, illegal construction, habitat degradation and other forms of unlawful conduct that may fall within the scope of environmental crime. These manifestations highlight not only the risk of irreversible damage to ecosystems, but also the existence of normative, institutional and practical vulnerabilities that limit the effectiveness of legal protection mechanisms.

The relevance of the research also results from the fact that, although the Republic of Moldova has a relatively complex regulatory framework in the field of protected natural areas, its practical application is affected by a series of institutional, administrative, economic and social vulnerabilities. According to the Yearbook of the Inspectorate for Environmental Protection – 2024 [1, p.121], the area of state-protected natural areas amounts to 66,995 ha, or 4.65% of the country's territory, and includes 387 sites, including 294 secular trees. According to this indicator, the Republic of Moldova ranks among the lowest in Europe.

The relatively low share of state-protected natural areas does not ensure the effective conservation of biological diversity in accordance with the requirements of international treaties in the field. Thus, as part of the response to the limited share of protected natural areas, as well as in order to address threats to biodiversity, the National Ecological Network was created, covering 11,113 km². The National Ecological Network emphasizes the importance of a landscape-level approach as a mechanism for conserving ecological processes and patterns. According to the National Development Strategy "European Moldova 2030", the target for expanding the network of protected areas is set at 10.0% of the country's territory by 2030 [2].

In this context, the assessment of the legal framework governing protected areas becomes necessary in order to identify the shortcomings that facilitate violations of the protection regime. The fragmentation of regulations, the overlapping or insufficient delimitation of the competences of public authorities, the formal nature of certain control mechanisms, the lack of effective monitoring, and the inconsistent application of legal liability are aspects that may reduce the state's capacity to prevent and combat environmental crime.

The purpose of the research is to analyse the legal framework applicable to protected natural areas from the perspective of its effectiveness in preventing, detecting and sanctioning unlawful acts affecting the environment. At the same time, the research aims to highlight the main vulnerabilities that facilitate environmental crime and to formulate guidelines aimed at strengthening the legal protection of natural heritage.

Therefore, the study aims to contribute to the substantiation of an integrated approach in which environmental law norms are correlated with the instruments of administrative, contraventional and criminal law, so that protected areas may benefit from real, effective and sustainable protection, also taking into account the well-known maxim: "think globally and act locally".

Methods and materials applied. In carrying out this scientific study, general and special methods of legal research were used, capable of ensuring a complex analysis of the regulatory framework applicable to protected natural areas and of the vulnerabilities that may facilitate environmental crime. The normative analysis method made it possible to examine the legal regulations relevant to environmental protection, biodiversity conservation and legal liability for unlawful acts committed within the perimeter of protected areas. At the same time, the systemic method was used to highlight the connections between the norms of environmental law, administrative law, contraventional law and

criminal law, in order to determine the degree of coherence and effectiveness of legal protection mechanisms.

Furthermore, the comparative method was applied in order to identify relevant normative and institutional benchmarks in the field of preventing and combating environmental crime, while the logical and deductive methods served to formulate conclusions regarding existing dysfunctions and directions for improving the legal framework. The research was based on the analysis of national legislation in the field of environmental protection and protected natural areas, relevant international instruments, specialised legal doctrine, as well as institutional materials concerning the administration, monitoring and control of activities carried out within protected areas.

Discussion and results obtained. One of the areas that has found adequate reflection in the legal regime of protection, both in international and national legislation, is the field of natural objects subject to a special protection regime or, in other words, specially protected natural areas. The legislation of the Republic of Moldova defines a ***protected natural area*** *as "a geographically delimited natural space, containing representative and rare natural elements, designated and regulated for the purpose of conserving and protecting all environmental factors within its boundaries*". However, in order to avoid certain difficulties in understanding this concept in relation to other similar notions, we consider it necessary to distinguish between the concept of a protected natural area and that of the fund of protected natural areas.

Thus, the notion of the "fund of protected areas" designates "*a much broader domain, consisting of the totality of natural areas in their diversity, as well as the objects and natural complexes protected by the state*".

Therefore, state-protected natural areas represent terrestrial, aquatic and/or underground areas with legally established boundaries and a special regime of protection and conservation, within which there are species of wild plants and animals, as well as biogeographical, landscape, geological, paleontological, speleological or other elements and formations of particular ecological, scientific or cultural value.

International, EU and national documents distinguish the following categories of protected areas, depending on the protection regime established: Category I — scientific reserves/strict nature reserves; Category II — natural parks; Category III — natural monuments/significant natural features; Category IV — nature conservation reserves/divided nature reserves/fauna sanctuaries; Category V — protected terrestrial or marine landscapes; Category VI — natural resource reserves; Category VII — natural biological regions/anthropological reserves; Category VIII — natural areas managed for multiple use/natural resource management areas; Category IX — biosphere reserves; Category X — natural properties of world heritage.

The establishment of protected areas occupies an important place among the methods and means of nature protection and conservation, by preserving and safeguarding representative natural samples so that they may be transmitted to future generations. In the same vein, Article 6 of the Law on the Fund of State-Protected Natural Areas [3] expressly enshrines the purpose of establishing this fund, aimed at regulating relations in the field of environmental protection; conserving natural objects and complexes for the present generation and future generations; carrying out an in-depth study of natural processes within biocoenoses, including important forest and steppe ecosystems, wetlands, breeding and hibernation sites and animal migration routes; restoring ecological balance in protected natural areas; maintaining the genetic fund within the biological capacities of natural objects and complexes; holding liable natural and legal persons who have caused

damage to protected natural areas; and ensuring compliance with international conventions and agreements concerning protected natural areas.

In the same context, it should be noted that the objects and complexes within the fund of protected areas are used for: the protection of the most representative natural areas; the preservation of the gene pool; biodiversity conservation; the preservation of the natural appearance of the geographical landscape; the protection of migration routes and breeding sites; the conduct of scientific research; the monitoring of protected natural areas; ecological, cultural and aesthetic education; and the recreation of citizens.

Therefore, it can be observed that these areas fulfill not only functions related to the conservation of biological diversity and the heterogeneity of environmental conditions, as well as socio-educational functions, but also an important scientific role through the research that may be carried out in these areas where ecological balance is not disturbed. This ensures a deeper understanding of the processes of biological productivity and of the stability of environmental protection.

With regard to the principles underlying the administration regime of the fund of protected areas, Article 19 of the Law [3] stipulates that: "The Government shall establish the entity responsible for the administration and management of protected natural areas, landscapes, Emerald sites and Natura 2000 sites, for ensuring the conservation of wild flora and fauna species, habitats and ecological corridors, as well as for their monitoring, management and protection".

The enshrinement of these principles constitutes a sectoral reflection of the constitutional obligations of the state to ensure the restoration and protection of the environment, as well as the maintenance of ecological balance [4, Art. 126 para. (2) lit. f], and the rational exploitation of land and other natural resources, in accordance with national interests [4, Art. 126 para. (2) lit. e].

The current regulatory and institutional framework concerning the protection and sustainable use of biological diversity is relatively well developed and has been progressively built in accordance with international commitments, including the CBD, Ramsar, CITES, Bonn and Bern Conventions, as well as the Republic of Moldova–European Union Association Agreement. The key normative acts include: Law No.1515/1993 on Environmental Protection; Law No.1538/1998 on the Fund of State-Protected Natural Areas; Law No.94/2007 on the National Ecological Network; Law No.325/2005 on the Red Book; Law No.149/2006 on the Fishery Fund; Law No.55/2024 on the Hunting Fund; and others. Environmental impact assessment instruments, regulated by Law No.11/2017, and strategic environmental assessment, regulated by Law No.86/2014, ensure the integration of conservation principles into planning.

However, the overall analysis of the regulatory framework and its implementation identifies a series of gaps and constraints that affect the effectiveness of conservation policies:

— The fragmentation and overlapping of institutional competences among environmental, agricultural, forestry and local public administration authorities, which complicates the uniform application of legal provisions and the integrated management of ecosystems;

— The lack of a coherent framework for ecosystem-based management, reducing the capacity for long-term planning and for maintaining ecosystem services; regulations remain largely focused on species and habitats, without a clear intersectoral approach;

— The insufficiency of economic and financial mechanisms aimed at stimulating biodiversity conservation, such as payments for ecosystem services, compensation measures and fiscal incentives, which limits the application of the "beneficiary pays" principle;

— Gaps in the updating and digitalisation of national databases, including registers of species and habitats, hunting and fishery inventories, affecting the accuracy of monitoring and reporting;

— The weak correlation between framework legislation and secondary legislation, especially between regulations on environmental protection, water management, agricultural and forestry land management, generating inconsistencies and divergent interpretations;

— Limited institutional capacities and human resources, particularly at local level, which affect the enforcement of norms, planning and compliance control;

— The absence of clear financing mechanisms for the management of protected areas, as the status of many areas remains merely formal in the absence of management plans and effective monitoring.

In the context of the Republic of Moldova's accession process to the European Union and of the commitments undertaken within the accession negotiations, particularly in the field of environmental protection, biodiversity conservation and the sustainable use of natural resources, the Draft Biodiversity Programme for 2026-2030 establishes the institutional, legal and operational framework necessary for the establishment, development and functioning of the Natura 2000 network as an integral part of the national biodiversity conservation system. It ensures the progressive alignment of national legislation, policies and practices with the standards and requirements of the European Union acquis. The Programme also highlights the need to overcome the limited approach focused exclusively on protected areas and to move towards an integrated ecosystem-based approach [5].

At the same time, the National Programme for Forest Extension and Rehabilitation for the period 2023-2032 (hereinafter – NPFER) [6] was conceptualised in order to achieve these objectives and to address socio-economic, ecological and climate-related challenges. The NPFER is aligned with global commitments and trends related to forests and land use, including the Glasgow Leaders' Declaration on Forests and Land Use, the United Nations Strategic Plan for Forests 2017-2030, and the European Green Deal. Taking into account the specific nature of the forestry sector, as well as the objectives established, the NPFER cannot be implemented within a medium-term period of 3-5 years. The achievement of the objectives set for the forestry sector in the "European Moldova 2030" Strategy and in the Government Activity Programme "Moldova of Good Times" requires a period of at least 10 years.

During 2024, forestry entities subordinated to the "Moldsilva" Agency afforested 4,292 ha within the framework of the NPFER (*Table* No.1).

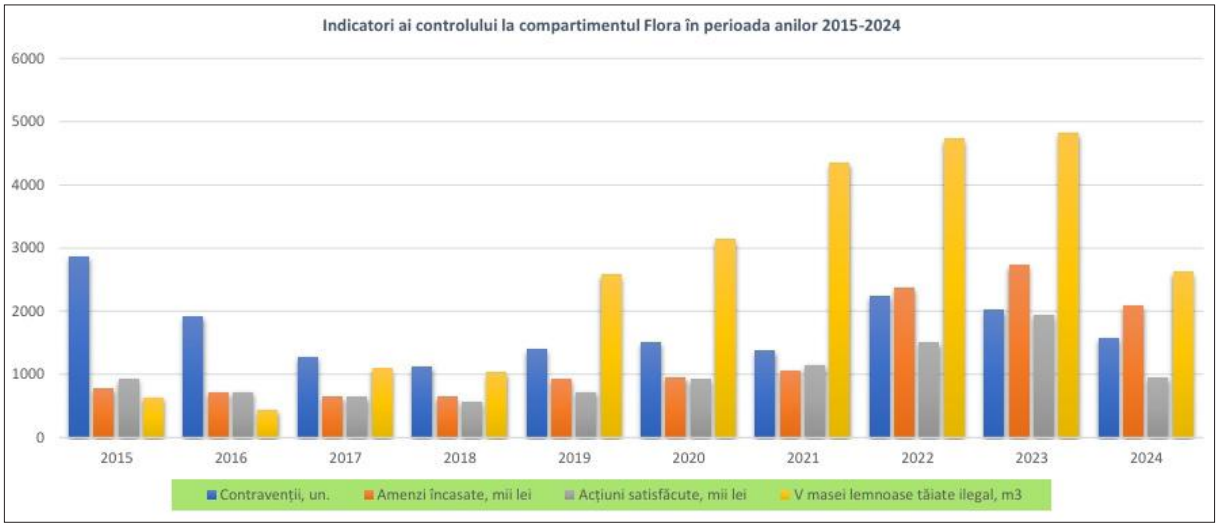
Entitatea silvică	ÎS Bălți	ÎS Călărași	ÎS Chișinău	ÎSC Cimișlia	ÎS Comrat	ÎS Edineț	ÎS Glodeni	ÎS Hîncești silva	ÎS.Iargara	Î.S.Nisporeni Silva	ÎS Orhei	ÎS Silva Centru	ÎSC Sil-Răzeni	ÎS Silva Sud	ÎS Soroca	ÎSC Strașeni	ÎS Șoldănești	ÎS Telenești	ÎS Tighina	RN Pădurea Domn	RN Codrii	RN Plaiul Fagului	RN Prutul de Jos
Suprafața împăduri tă, ha	146	268	200	129	192	384	181	427	184	171	301	159	89	316	216	156	124	131	287	72	65	73	21

Tabelul 1: Afforestation Area in 2024 under the National Program for Forest Expansion and Rehabilitation (NPFER)

The Inspectorate for Environmental Protection is empowered, under the provisions

of the Regulation on the organisation and functioning of the Inspectorate for Environmental Protection, approved by Government Decision No.548/2018, to carry out state supervision and control in the field of environmental protection and the rational use of natural resources, and to perform its functions in several areas, including the protection of flora, fauna and protected natural areas [7, Art. 8, point 8.4].

The results of state control concerning environmental protection under the "Flora" section are presented in *Table* No.2.



Indicatori/ani	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*2023*	*2024*
Contravenţii, un.	2867	1916	1275	1120	1365	1497	1367	2233	2012	1564
Amenzi încasate, lei	772110	707666	641705	633525	918100	951225	1048740	2366775	2725550	2074400
Acţiuni satisfăcute, lei	924714	714961	633014	558084	716159	912449	1140354	1496081	1930644	941190
Arbori tăiaţi ilegal, un.	2606	4760	5676	4590	12743	13166	12735	32314	32866	17550
V masei lemnoase, m3	630	431	1084	1022	2568	3129	4340	4720	4815	2611

Tabelul 2: The results of state control concerning environmental protection under the "Flora" section

Legal Liability. The establishment of the fund of protected areas aims to ensure the protection and conservation of natural objects and complexes for the present generation and future generations. This presupposes an effective correlation between organisational, economic and educational measures and potential anthropogenic activities, ensured through legal norms.

Thus, the law expressly provides for the civil, administrative or criminal liability of natural and legal persons who have caused damage to protected areas [3, Art. 98 para. (1)].

For the establishment of environmental liability, the provisions of Law No.107/2025 on environmental liability in relation to the prevention and remedying of environmental damage shall apply [3, Art. 98 para. (3)].

"*Material damage caused by natural and legal persons to the objects and complexes within the fund of protected areas shall be compensated in the manner established by the legislation in force*" [3, Art. 99 para. (1)].

Such a situation is generated by the right of every person to benefit from a healthy and balanced ecological environment, enshrined in Article 37 of the Constitution of the Republic of Moldova [3]. Thus, although in the vast majority of cases, pursuant to the provisions of Article 166 of the Civil Procedure Code of the Republic of Moldova [8], which establishes that "anyone who claims a right against another person or has an interest in

establishing the existence or non-existence of a right must file a statement of claim with the competent court", the person bringing an action is required to demonstrate their own injured personal interest, an aspect which is most often reflected in the impairment of an individual interest or right, nevertheless, in cases involving damage caused to objects and complexes within the fund of protected areas, such an approach is no longer appropriate.

This is explained by the fact that the interest in maintaining the integrity of the objects and complexes forming part of the fund of state-protected natural areas must be analysed from the perspective of the need to ensure ecological balance, as a value of general public interest. Indeed, the protection of these natural objectives is not merely an obligation of public authorities, but also a legal guarantee for the exercise of the fundamental right to a healthy environment.

In this regard, the beneficiary of constitutional protection is not exclusively the citizen of the Republic of Moldova, but any person located on the territory of the state, irrespective of citizenship or national affiliation. This interpretation follows from the wording of Article 37 of the Constitution of the Republic of Moldova [3], which enshrines the right to a healthy environment by using the phrase "every human being", thereby conferring upon the constitutional norm a universal and non-discriminatory character.

Therefore, where, through the statement of claim, the claimant formulates claims concerning compensation for damage caused to the environment, the court is not entitled to make the admissibility of the action conditional upon the indication of a specific real right allegedly infringed by the harmful act. This is because ecological damage does not exclusively affect an individual patrimonial right, but infringes upon a public interest in environmental protection, including the right of every person to a healthy environment.

When analysing a person's right to an ecologically balanced environment, it is not sufficient merely to recognise its universal character; it is also necessary to acknowledge the effective possibility for the holders of this right to seek its protection through administrative or judicial means.

Therefore, the fact that a natural or legal person has referred the matter to the court or to the competent authority in order to obtain compensation for damage caused to objects and complexes within the fund of protected areas, and that the claim has been admitted, does not exclude the right of other persons to formulate similar claims, insofar as the ecological damage has not been fully remedied. Where the measures ordered do not fully cover the damage caused to the environment, other interested persons may request the supplementation of the claims, intervene in the proceedings or initiate a separate action, in order to ensure the effective and full remediation of ecological damage.

With regard to the right of the author of the damage to repair the harm in kind, as well as the right of the injured person to request such a form of reparation, both enshrined as general rules of civil liability, it should be specified that, in matters concerning damage caused to objects and complexes within the fund of state-protected natural areas, the application of this rule is limited.

This particularity results from the complex nature of ecological damage, which may affect ecosystems, habitats, species, soils, waters, natural formations and interdependent ecological processes. The restoration of the previous state cannot be left exclusively to the discretion of the perpetrator, as it requires specialised scientific and technical knowledge.

In such a situation, the only possibility for achieving reparation is based on the rule of compensation by equivalent value.

It follows from the foregoing that, in the case of damage caused to objects and com-

plexes within the fund of state-protected natural areas, both the authority competent to conduct the preliminary settlement procedure and the court must give priority to analysing reparation by equivalent value.

Thus, the object of the examination shall relate either to the value of the expenses necessary to remove the harmful consequences or to the amount of compensation established according to the criteria provided by law for environmental damage. In such situations, the emphasis is not placed on the perpetrator's right to choose the method of reparation, but on ensuring effective, proportionate compensation that complies with the special legal regime of protected natural areas.

In another respect, the hypothesis in which environmental damage is caused intentionally, through unlawful conduct consciously assumed by the perpetrator, cannot be excluded. This category includes acts such as poaching, unauthorised fishing, the capture or destruction of specimens of wild fauna, as well as the unauthorised import or export of rare species or of species included in the Red Book. Such actions affect not only the economic value of natural resources, but also biodiversity, ecological balance and the integrity of protected natural objects and complexes. Therefore, the prevention, respectively the anticipation, of environmental damage constitutes an essential prerogative of the democratic state.

A brief analysis of Law No.407/2006 on hunting and the protection of the hunting fund in Romania makes it possible to observe that the Romanian legislature expressly establishes the list of wild fauna species of hunting interest for which hunting is prohibited, as well as the amount of compensation applicable in the event of unlawful acts, including poaching or illegal hunting. At the same time, the Romanian regulatory framework enshrines procedural mechanisms concerning the identification and assessment of damage caused by specimens of fauna species of hunting interest.

In this regard, the assessment of the damage falls within the competence of a specially established commission, composed of representatives of the administrative-territorial unit within whose jurisdiction the damage occurred, of the county directorate for agriculture, as well as of the territorial structure of the central public authority competent in the field of hunting or environmental protection, as the case may be. The failure to appoint representatives of the competent institutions entails contraventional liability, thereby giving the procedure a mandatory and functional character.

By comparison, national regulations [9, Annex 6] provide for payments collected for damage caused by natural and legal persons through the hunting, acquisition, sale, possession, unlawful export or destruction of game animals. However, the amount of these payments is considerably lower than the compensation provided under Romanian legislation. For example, for the destruction of an elk, the national framework establishes a payment of 500 conventional units, equivalent to approximately EUR 1,200, whereas Law No.407/2006 provides for compensation of EUR 20,000.

Under these circumstances, it is necessary to formulate a *de lege ferenda* proposal regarding the revision of the national regulatory framework, with a view to bringing it closer to the standards of Romanian hunting legislation, particularly in terms of assessing damage per specimen hunted illegally. Increasing the amount of compensation would contribute not only to the harmonisation of national legislation with European requirements in the field of biodiversity protection, but also to the strengthening of the preventive function of legal liability, discouraging the commission of unlawful acts directed against wild fauna and protected natural areas [10, p.87].

"*Reparation for damage caused to objects and complexes within the fund of protected*

areas shall be carried out voluntarily or by court judgment" [3, Art. 99].

Legal action constitutes the procedural means by which the right to claim reparation for damage caused to objects and complexes within the fund of state-protected natural areas is enforced, where the author of the harmful act refuses to repair such damage within the framework of the prior extrajudicial procedure.

In the civil procedural law of the Republic of Moldova, the statement of claim represents the main instrument through which an interested person seeks the protection of an infringed or contested right, freedom or legitimate interest. In matters concerning damage caused to protected areas, it has a patrimonial character, as it seeks to compel the perpetrator to compensate for the damage caused to protected natural values.

At the same time, the right to request reparation for damage must not be linked exclusively to the existence of a real right over the affected property. Any person may invoke the need to repair ecological damage on the basis of the fundamental right to a healthy and ecologically balanced environment.

The extent of compensation shall be determined according to the value of the direct damage, as well as the foreseeable and unforeseeable consequences of the unlawful act, including those that may materialise in the future. In this matter, the principle of full reparation of damage applies, so that compensation reflects the seriousness of the harm caused to the objects and complexes within the fund of protected areas and seeks, as far as possible, to restore the affected ecological balance.

In cases where restoration in kind is impossible, such as when an animal within a protected natural area has perished, the claim for reparation of the damage may only seek as its exclusive object, compensation in the form of a monetary equivalent.

In matters concerning damage caused to objects and complexes within the fund of state-protected natural areas, the liability of the author of the harmful act is, in principle, objective in nature and independent of fault. Therefore, the injured person is not required to prove the perpetrator's guilt, it being sufficient to establish the unlawful act, the damage and the causal link between them. In such cases, liability may be incurred regardless of the form of guilt, discernment, age or mental state of the author of the damage, insofar as the special law does not provide otherwise.

At the same time, the court determines the method of compensation in relation to the nature of the damage and the circumstances of the case. Thus, in the case of injury to an animal within a protected area, reparation may consist of covering the expenses necessary for its treatment and recovery. By contrast, in the case of the animal's killing, compensation does not represent merely the monetary equivalent of the lost specimen, but also a form of covering the ecological damage generated by its removal from the natural environment and by the impairment of the ecosystem balance of the protected area.

Here, as mentioned previously, even if reparation in kind may be carried out personally by the perpetrator, the appropriateness of applying such a method is nevertheless examined by the court in each individual case. In any event, reparation by equivalent value represents the basic form of compensation. From the perspective of appropriateness, reparation through the perpetrator's own actions may be admitted only where the perpetrator is a specialist in this field and their occupation is specifically related to the treatment of animals or to the restoration of the natural conditions of wildlife habitats.

It should be specified that only the court may order such a method of reparation. Likewise, the court also determines the amount of reparation by monetary equivalent. It does so according to the extent of the damage as assessed on the date of delivery of the judgment.

Taking into account the continuous nature of natural processes, as well as the fact that the nature and extent of the damage caused to the animal kingdom cannot always be fully known, the claimant may also, after the adoption of the judgment, file a claim for compensation concerning damage that arose after the delivery of that judgment [10, p.111].

In a case [11] examined by the national court, it was established that, on 29 December 2022, Calugareanu D.G., pursuing the purpose of illegal hunting, being aware of the prejudicial nature of his actions, foreseeing their consequences and consciously accepting the occurrence of such consequences, without the appropriate hunting authorisation and without being included in any group of hunters authorised to hunt, during a prohibited period and time, intentionally installed several metal snares on a fence located in the "Plaiul Fagului" Reserve, Ungheni district, Rădenii Vechi village, with the purpose of capturing a wild animal.

It is noted that the civil action brought within the criminal proceedings has as its object the engagement of tort liability of the persons responsible under civil law for the damage caused by the commission of the act forming the subject matter of the criminal action. The Court notes that, on 15 February 2022, the injured party, the State Enterprise "Plaiul Fagului" Natural Reserve, located in Rădenii Vechi village, Ungheni district, IDNO: *****, filed a civil action against the defendant Calugareanu D.G., seeking recovery of the material damage caused by the offence in the amount of 12,000 lei (case file, pp.37-40).

In this regard, the Court finds that the conditions for tort liability are met in the present case, since, through the defendant's unlawful act, according to the indictment, he directly caused patrimonial damage in the amount of 12,000 lei. Thus, it is noted that, in criminal proceedings, the civil action constitutes a means of repairing the damage caused by the offence, and its exercise requires the cumulative fulfillment of certain conditions.

Based on the foregoing, the court concludes that the claim filed by the injured party, the State Enterprise "Plaiul Fagului" Natural Reserve, concerning the recovery of material damage in the amount of 12,000 lei, is well-founded and, for these reasons, shall be admitted in full.

As a result, the Court found Calugareanu D.G., guilty and convicted him under Article 233 para. (1) of the Criminal Code of the Republic of Moldova, sentencing him to 1 (one) year of imprisonment, to be served in a semi-closed penitentiary, with conditional suspension of the sentence for a probation period of 1 (one) year, and ordering him to pay the damage caused in the amount of 12,000 (twelve thousand) lei.

With regard to the above-mentioned aspects, we conclude that the administration of justice requires a clear delimitation of the competences of courts and of the authorities involved in identifying, assessing and repairing damage caused to objects and complexes within the fund of state-protected natural areas, in order to avoid any overlapping of powers or the existence of uncovered areas.

Where the damage is caused by several persons, they shall be jointly and severally liable for the entire damage. The claimant may bring the action against any of the perpetrators, without being obliged to identify all of them by name, and may seek full reparation of the damage. The defendant who has fulfilled the compensation obligation subsequently has the right of recourse against the other co-authors.

However, it is necessary to distinguish between the main action and the recourse action. In the main action, liability for damage caused to protected areas is assessed according to the special rules of environmental law, including on the basis of objective liability, independent of fault. By contrast, in the recourse action, the rules of civil law governing relations between joint and several debtors apply, with the court examining

not the ecological damage itself, but the allocation of the pecuniary obligation among the co-authors of the harmful act.

The Contraventional and Criminal Regime Applicable to Acts Committed within Protected Areas. The legal protection of state-protected natural areas is ensured not only through rules of administration and conservation, but also through mechanisms of legal liability. In this regard, the Contravention Code of the Republic of Moldova provides sanctions for violations of the protection regime applicable to objects and complexes within the fund of state-protected natural areas. Article 141 of the Contravention Code [12] sanctions violations of the protection regime of objects and complexes within the fund of state-protected natural areas.

At the same time, the law [3, Art.98 para. (2)], expressly provides for the acts that are considered contraventions, unless they constitute offences under the law, as follows:

a) The use of protected natural areas for purposes other than those provided for by this Law;

b) The approval of the development of planned activities within state-protected natural areas and Emerald sites without their prior submission to the environmental impact assessment procedure and/or, where applicable, biodiversity assessment, in accordance with Law No.86/2014 on Environmental Impact Assessment;

c) The deterioration or destruction of protected natural areas;

d) The failure to eliminate the ecological consequences of accidents, disasters and other destructive phenomena;

e) The introduction of plants and animals alien to the respective area, which pollute the native gene pool;

f) The violation of the rules on the export of plants and animals placed under state protection;

g) The unauthorised execution of any development or construction works;

h) The discharge of industrial and household waste into waters or onto land, as well as its storage within protected natural areas and their protection zones;

i) The use of chemicals in protection zones beyond the permitted limits;

j) The unauthorised harvesting of forest fruits and berries, mushrooms, medicinal plants, seeds and aquatic organisms;

k) The unauthorised relocation of the boundaries of protected natural areas;

l) The damage, removal or erasure of boundary, geodetic or topographic markers, warning panels or signs;

m) The entry of unauthorised persons, with or without motor vehicles, into strictly protected zones;

n) Camping in prohibited areas;

o) Grazing in prohibited areas;

p) The unauthorised organisation and carrying out of economic, tourism and recreational activities;

r) Photographing or filming for commercial purposes without the payment of the required fees.

Therefore, the contraventional norm has both a preventive and a sanctioning role. It applies in situations where unlawful acts do not reach the level of social danger required to constitute a criminal offence, but nevertheless affect the special protection regime.

In more serious cases, criminal liability becomes applicable. The Criminal Code of the Republic of Moldova [13] contains a chapter dedicated to environmental offences, aimed at protecting the environment, natural resources and ecological balance.

It is important to mention that, in the Environmental Strategy for 2024-2030, our state acknowledges that the sanctions regime for non-compliance with environmental legislation contains several weaknesses that require interventions for improvement. The sanctions applied for non-compliance with environmental legislation are not sufficiently severe, do not fully reflect and are not proportionate to the damage caused to the environment, and do not encourage compliance with the law, even though, in recent years, amendments have been made to the Criminal Code of the Republic of Moldova No.985/2002 and to the Contravention Code of the Republic of Moldova No.218/2008, with a view to strengthening the environmental sanctions system. Environmental fines are also too low and do not determine economic operators and companies to reduce pollution levels, to comply with and observe environmental requirements, which involve costs significantly higher than the value of the fines currently applied [2, p. 17].

In turn, the methodologies for calculating environmental payments and the instructions for assessing environmental damage are outdated, no longer correspond to the current requirements of the country and do not take into account the impact of emissions on the environment, the extent of damage resulting from the use of natural resources, or the real financial cost of compensating environmental damage. There is also a differentiated approach by cities and areas regarding the amount of payments for the same types of pollution, which does not encourage the abandonment of polluting technologies, but rather creates the premises for locating environmentally harmful installations in areas with a lower level of pollution payments. Therefore, changes in the application of environmental payments must be implemented as soon as possible and should aim to encourage compliance with and observance of environmental requirements [2, p.18].

Therefore, from a criminal law perspective, environmental crime committed within protected areas presents increased gravity, as it affects not only an individual natural asset, but an entire ecological system protected by law. The damage is not limited to the economic value of the destroyed resource, but also includes the loss of biodiversity, habitat degradation, the impairment of ecosystem functions, the diminution of the scientific and landscape value of the territory, as well as the reduction of its natural regeneration capacity.

Sanctioning vulnerability also manifests itself when contraventional sanctions are not sufficiently deterrent in relation to the economic benefits obtained through the illegal exploitation of resources. If the fine is lower than the profit resulting from illegal logging, illegal hunting, unauthorised fishing or land use, the legal norm loses its preventive character. Under such circumstances, perpetrators may regard the sanction as a "cost of illegal activity", which diminishes the effectiveness of legal protection.

A distinct problem is the difficulty of assessing ecological damage. In the case of protected areas, the damage is not always immediately visible and cannot be reduced to the material value of the felled trees or extracted resources. Habitat degradation, species disappearance, soil damage, ecosystem fragmentation and the loss of ecological functions constitute complex, sometimes irreversible damage, requiring specialised expertise. In the absence of clear and uniformly applied methodologies, the establishment of liability may become difficult.

In addition to these issues, there is also the insufficiency of technical equipment. Combating environmental crime requires the use of modern technologies, such as GIS systems, drones, surveillance cameras, digital databases, applications for reporting violations, interactive maps and updated registers of protected areas. Without such instruments, control remains predominantly reactive and dependent on citizens' reports or

occasional inspections.

Comparative Analysis of Legislation and Practices in EU Countries. At the European level, the Natura 2000 Network represents the main instrument of nature conservation policy, being composed of Special Protection Areas for birds — SPAs, designated under the Birds Directive, and Special Areas of Conservation — SACs, established pursuant to the Habitats Directive.

SPAs are designated directly by the Member States and notified to the European Commission, whereas SACs involve a staged procedure: the proposal of sites of Community importance, their selection at European level and the establishment of definitive protection by the states. Consequently, the level of protection may vary depending on the category of the area, the conservation objectives and the measures applied at national level.

In Germany, the Federal Nature Conservation Act — *Bundesnaturschutzgesetz* [14] — regulates the main categories of protected areas and establishes specific conservation objectives. Among these, the most relevant are national parks, nature reserves — N*aturschutzgebiete*, NSG — and protected landscapes — *Landschaftsschutzgebiete*, LSG.

The legal regime differs depending on the protection category. Thus, national parks imply a high level of conservation, with severe limitations on economic activities, while nature reserves prohibit, pursuant to § 23 BNatSchG, activities likely to destroy, damage or alter the protected area or its components.

For protected landscapes (*Landschaftsschutzgebiete*, LSG), the level of protection is lower compared to national parks and nature reserves. Pursuant to § 26 BNatSchG, their purpose is to maintain, develop or restore the functionality of ecosystems, their capacity for regeneration and the sustainable use of natural resources.

In this regard, German legislation establishes certain rules and prohibitions applicable to activities, including agricultural activities, in order to achieve conservation objectives. Unlike the European model, which is predominantly focused on achieving conservation outcomes, the German regulation of national protected areas is more strongly conduct-oriented, directly establishing the actions that are permitted, limited or prohibited.

In Germany, restrictions on the use of agricultural land within protected areas vary depending on the objectives of each area and are generally established through individual normative acts.

Nature reserves and protected landscapes frequently prohibit construction works, the exploitation of mineral resources and the removal of landscape elements. Conditions may also be imposed regarding the water regime, mowing, grazing, the period of land use and livestock density.

According to § 14 BNatSchG, activities that affect protection objectives are considered interventions in nature and must be avoided or compensated. However, agriculture carried out in accordance with good agricultural practices is not, as a rule, classified as an intervention under the so-called "agricultural clause", without excluding the possibility of establishing special restrictions for certain protected areas.

It is also relevant to provide a concise presentation of the regime of protected natural areas in Romania, a state characterised by remarkable biodiversity, determined by its geographical position and the diversity of its landforms.

The Carpathian Mountains and the Danube Delta are included in WWF's "Global 2000" [15] among the 200 most important Ecoregions in the world for the conservation of habitats and biodiversity. Following Romania's accession to the European Union, protect-

ed natural areas continued to expand.

Since human activities — economic, social and cultural — are interdependent with the natural environment, the development of protected areas must be based on the principle of conservation integrated with sustainable development.

In multifunctional landscapes, ecosystem protection may coexist with the responsible use of resources, so that economic and social services are maintained without compromising biodiversity. In this regard, the valorisation of ecosystem services must be correlated with sustainable economic activities, since individual and collective well-being depends directly on the quality of the environment and the effectiveness of conservation measures.

Another example of this kind is Sweden [16], where an active environmental policy is implemented both at state level and at public level. The main objectives of this policy are health protection, the conservation of natural biological diversity, environmental management aimed at its optimisation, and the protection of natural and cultural landscapes. The country implements an energy conservation programme and promotes the predominant use of environmentally safe energy sources, including biomass and alternative sources. Strict restrictions have been introduced on emissions of harmful substances from vehicles. A decision has also been taken to gradually phase out nuclear energy.

Another example is the Netherlands, whose Constitution also contains a special article on the protection and improvement of the environment, aimed at enhancing the quality of life. In this country, the public environmental organisation "Children of the Earth" operates actively and implements, in the field of environmental management [17], an action plan based on scientific principles.

Certain successes have also been achieved in France, whose environmental system is much more centralised. The Czech Republic is an example of a country where protected landscape areas form the basis of the national system of protected areas, although three national parks have also been established in the northern and southern border regions [18]. France has developed a slightly different system of protected areas, including national parks, regional parks and nature reserves [19].

In conclusion, the effective implementation of the European Union's sustainable development strategy requires the consolidation of a coherent environmental policy that is integrated and adapted to new ecological, economic and social realities. Such a policy must be based on the principle of concentrating institutional efforts and on effective cooperation between the structures of the European Union, the Member States and the supranational actors involved in the field of environmental protection.

At the same time, the development of environmental policy must reflect its multifactorial and participatory nature, taking into account the simultaneous involvement of public authorities, the economic sector, civil society and environmental protection organisations. Within this framework, the conservation of the natural environment and the guarantee of ecological security must prevail over circumstantial economic interests, constituting essential premises for sustainable development at European level.

Conclusions. A clean and healthy environment represents a fundamental condition for the observance of human rights enshrined in the Constitution of the Republic of Moldova, such as the right to life and the right to physical and moral health. Maintaining the quality of the main components of the environment — air, water, soil, flora and fauna — is essential for ensuring sustainable development.

In this context, protected natural areas play a crucial role, contributing to the conservation of biodiversity, ecosystems and rare habitats, as well as to the protection of

plant and animal species. Through the special restrictions applied, they maintain ecological balance, protect natural, geological and cultural heritage, support the fight against climate change and provide opportunities for scientific research, education and recreation, while ensuring the sustainable use of natural resources.

The implementation of adaptation measures in environmental conservation management at local level represents a complex process, determined by the ecological, social, economic and institutional particularities of each region or country. For this reason, the identification of effective solutions requires a transdisciplinary approach that integrates legal, ecological, administrative and socio-economic perspectives.

This research synthesises the main difficulties concerning the implementation of recommendations in the field of protected natural areas at the level of national legislation, formulating conclusions and proposals regarding their monitoring, the assessment of the vulnerability of protected areas, the improvement of current and future management practices, as well as the consolidation of the legal and policy framework applicable to biodiversity conservation.

International case studies on the effectiveness of protected areas increasingly highlight the interdependence between socio-economic outcomes and environmental conservation objectives. The effective protection of biodiversity cannot be achieved exclusively through restrictive measures; rather, it requires institutional support, local cooperation and the involvement of communities located in the vicinity of protected areas.

In this regard, protected areas must contribute, directly or indirectly, to the economic well-being of local communities through activities compatible with conservation, such as ecotourism, environmental education, the sustainable use of resources and the development of ecosystem services. However, although the importance of the socio-economic dimension is increasingly recognised, research that rigorously assesses the impact of protected areas on local communities remains relatively limited, especially in the context of developing states.

Local public administration represents an essential link in the application of environmental legal norms, as it is in direct contact both with the population and with the immediate users of natural resources. Through this position, local authorities can promptly identify risks of degradation, prevent violations of the protection regime and contribute to the effective conservation of protected natural areas located within the boundaries of localities.

In this regard, the legislation of the Republic of Moldova must provide for a clear mechanism for holding local public authorities accountable, complemented by the continuous training of civil servants in the field of biodiversity protection. This mechanism must be based on transparency, access to environmental information, the up-to-date nature of data and the involvement of citizens in local ecological issues and biodiversity protection, from the perspective of the benefits they provide.

Contemporary constitutional and environmental legislation is characterised by the recognition of environmental protection as a fundamental objective of the state, as well as by the grounding of the right to a healthy environment in essential ecological principles, such as the principle of minimum intrusion, the principle of environmental conservation and, last but not least, the principle of cooperation.

At the same time, the effectiveness of protected natural areas depends on the implementation of special management, monitoring and ecological restoration programmes. The ecological, social and economic issues generated by habitat connectivity and the integration of protected areas into the landscape require the adaptation of biodiversity

conservation strategies at different levels of implementation: national, regional and local.

In this context, the Information System "Register of Protected Natural Areas" (hereinafter – IS RPNA) and the Regulation on the manner of maintaining the Register of Protected Natural Areas should be implemented. This would allow existing information to be consolidated into a single platform, reducing data fragmentation and providing a solid basis for decision-making in the field of environmental protection. At the same time, the information system would support interinstitutional cooperation and facilitate the fulfilment of the Republic of Moldova's international commitments in the field of biodiversity conservation.

The Register would also contribute to compliance with international reporting obligations, simplifying the process of alignment with European standards. In addition, the integrated data would provide solid support for the development of public policies and for decision-making in the field of environmental protection. The system will facilitate the identification of vulnerable areas, the adoption of conservation measures and rapid access to data, supporting evidence-based decisions and the sustainable management of natural resources. At the same time, transparency and interoperability will hold institutions accountable and involve local communities in environmental protection [20].

The implementation of the IS RPNA will bring significant benefits to the public sector, providing an efficient tool for managing data on the protected natural areas of the Republic of Moldova. The system will contribute to reducing the time and resources required for verifying and updating information, ensuring a single and reliable record, and will facilitate data exchange and interoperability among public institutions and with other state information systems through the MConnect platform. This will lead to an increase in the quality of public services and to the modernisation of information management concerning protected natural areas [20].

Bibliographical references

1. Anuarul IPM-2024: Protecția mediului în Republica Moldova. Chișinău, 2025, p.121. Disponibil: https://ipm.gov.md/upfiles/menu_files/ANUARUL%202024.pdf (accesat 02.04.2026).
2. Strategia de Mediu pentru anii 2024-2030. Aprobată prin Hotărârea Guvernului nr.409 din 12.06.2024. În: Monitorul Oficial al Republicii Moldova, 30.07.2024, nr.325-328.
3. Legea privind fondul ariilor naturale protejate de stat nr.1538 din 25.02.1998. În: Monitorul Oficial Nr.66-68 din 16.07.1998. Disponibil: https://www.legis.md/cautare/getResults?doc_id=154107&lang=ro (accesat 02.04.2026).
4. Constituţia Republicii Moldova nr.1 din 29.07.1994. În: Monitorul Oficial Nr.466 din 13.11.2024.
5. Proiectul Programului privind biodiversitatea pentru anii 2026-2030. Disponibil: https://particip.gov.md/ro/download_attachment/32742 (accesat 02.04.2026).
6. Hotărârea Guvernului nr.55 din 17.02.2023 cu privire la aprobarea Programului național de extindere și reabilitare a pădurilor pentru perioada 2023-2032 și a Planului de acțiuni pentru implementarea acestuia pe perioada 2023-2027. În: Monitorul Oficial nr.85-86 din 14.03.2023. Disponibil: https://www.legis.md/cautare/getResults?doc_id=135917&lang=ro.
7. Hotărârea Guvernului nr.548 din 13.06.2018 cu privire la organizarea şi funcționarea Inspectoratului pentru Protecţia Mediului. În: Monitorul Oficial nr.210-223 din 22.06.2018
8. Disponibil: https://www.legis.md/cautare/getResults?doc_id=154404&lang=ro.

9. Codul de procedură civilă nr.225 din 30.05.2003. În: Monitorul Oficial al Republicii Moldova, 12.06.2003, nr.111-115.
10. Legea regnului animal nr.439 din 27.04.1995. În: Monitorul Oficial nr.62-63 din 09.11.1995.
11. Gugulan Ev. Repararea daunelor cauzate regnului animal. Teză de doctor în drept, 2025.
12. Sentință Judecătoria Ungheni din 04.09.2023 în Dosarul nr.1-174/2023. Disponibil: https://instante.justice.md/ro/pigd_integration/pdf/F4A92696-EE55-4918-BC54-6DBF459B82BA (accesat 02.04.2026).
13. Codul contravenţional al Republicii Moldova nr.218 din 24.10.2008. În: Monitorul Oficial nr.78-84 din 17.03.2017. Disponibil: https://www.legis.md/cautare/getResults?doc_id=154347&lang=ro (accesat 02.04.2026).
14. Codul penal al Republicii Moldova nr.985 din 18.04.2002. În: Monitorul Oficial nr.72-74 din 14.04.2009. Disponibil: https://www.legis.md/cautare/getResults?doc_id=153355&lang=ro.
15. Bundesamt fur Justiz. Law on Nature Conservation and Landscape Care. Bundesamt fur Justiz, 2009. Available: https://www.gesetze-im-internet.de/bnatschg_2009/ (accesat 17.04.2026).
16. Geacu S., Dumitraşcu M. (2006). Rezervaţii şi parcuri naturale şi naţionale din România. În: Mediul Ambiant, 2006, Vol. 4, nr.28, p.31-36. Disponibil: https://ibn.idsi.md/sites/default/files/imag_file/Rezervatiile%20si%20parcurile%20naturale% 20si%20nationale%20din%20Romania.pdf (accesat 17.04.2026).
17. Sweden's environmental objectives. 2018. Available: https://www.naturvardsverket.se/om oss/publikationer/8800/swedens-environmental-objectives--an-introduction (accesat 02.04.2026).
18. The Environmental Implementation Review 2019. Country Report the Netherlands. Brussels: European Commission, 2019. Available: https://ec.europa.eu/environment/eir/pdf/report_nl_en.pdf (accesat 05.04.2026).
19. The Environmental Implementation Review 2019. Country Report Czech Republic. Brussels: European Commission, 2019. Available: https://ec.europa.eu/environment/eir/pdf/report_cz_en.pdf (accesat 15.04.2026).
20. The Environmental Implementation Review 2019. Country Report France. Brussels: European Commission, 2019. Available: https://ec.europa.eu/environment/eir/pdf/report_fr_en.pdf (accesat 11.04.2026).
21. Nota de fundamentare la proiectul Hotărârii Guvernului cu privire la aprobarea Conceptului Sistemului informațional „Registru ariilor naturale protejate" și a Regulamentului privind modul de ținere a Registrului ariilor naturale protejate. Disponibil: https://particip.gov.md/ro/download_attachment/32750 (accesat 02.04.2026).

CZU 343.9 **DOI: https://doi.org/10.5281/zenodo.20826768**

THEORETICAL FOUNDATIONS OF CRIME PREVENTION IN MODERN PREVENTION AND COMBATING POLICIES: PROBLEMS AND PERSPECTIVES

Lilia CATAN,
Senior Officer, Records and Study Documents Section,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0003-7112-836X

Evghenia GUGULAN,
PhD, Associate Professor,
Head of Private Law Department,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-5960-1164

Abstract

The article analyzes the theoretical foundations of crime prevention within modern criminal policy. It highlights prevention as a key component of penal policy, alongside sanctions and reintegration measures, as reflected in European recommendations, including those of the Council of Europe. Prevention is understood both in a legal-penal sense (general and special prevention through sanctions) and in a sociological-criminological sense (addressing causes of crime).

The study emphasizes three dimensions of criminal policy in the Republic of Moldova: legislation and sanctions, specialized prevention institutions, and societal reaction to crime. It also discusses limitations of preventive policies, such as the impossibility of fully eliminating crime, difficulties in evaluating results, high costs, and potential restrictions on individual freedoms.

The work further examines general and special prevention, social and situational prevention, juvenile delinquency policies, and European standards. It underlines the importance of proportionality, rehabilitation, and community involvement in crime prevention strategies.

Finally, it concludes that modern criminal law balances social defense with individual rights, focusing on reducing crime through integrated, evidence-based and cooperative approaches.

Keywords: crime prevention, criminal policy, general prevention, special prevention, juvenile delinquency, social reintegration, criminal sanctions, Council of Europe.

FUNDAMENTELE TEORETICE ALE PREVENIRII CRIMINALITĂȚII ÎN CADRUL POLITICILOR MODERNE DE PREVENIRE ȘI COMBATERE: PROBLEME ȘI PERSPECTIVE

Abstract

Articolul analizează fundamentele teoretice ale prevenirii infracționalității în cadrul politicii penale contemporane. Acesta evidențiază prevenirea ca o componentă esențială a politicii penale, alături de sancțiuni și măsurile de reintegrare socială, astfel cum rezultă din recomandările europene, inclusiv cele ale Consiliului Europei.

Prevenirea este înțeleasă atât în sens juridico-penal, prin prevenția generală și specială realizată prin intermediul sancțiunilor, cât și în sens sociologic și criminologic, prin abordarea cauzelor și factorilor care generează criminalitatea.

Studiul evidențiază trei dimensiuni ale politicii penale în Republic of Moldova: legislația și sistemul sancționator, instituțiile specializate de prevenire și reacția societății față de fenomenul infracțional. Totodată, sunt analizate limitele politicilor preventive, precum imposibilitatea eliminării complete a criminalității, dificultățile de evaluare a rezultatelor, costurile ridicate și potențialele restrângeri ale libertăților individuale.

De asemenea, lucrarea examinează prevenirea generală și specială, prevenirea socială și situațională, politicile privind delincvența juvenilă și standardele europene în materie. Se subliniază importanța principiilor proporționalității, reabilitării și implicării comunității în strategiile de prevenire a infracționalității.

În concluzie, studiul arată că dreptul penal modern urmărește realizarea unui echilibru între apărarea socială și respectarea drepturilor individuale, având ca obiectiv reducerea criminalității prin abordări integrate, fundamentate pe dovezi și bazate pe cooperare instituțională și socială.

Cuvint- cheie: prevenirea criminalității, politică penală, prevenție generală, prevenție specială, delincvență juvenilă, reintegrare socială, sancțiuni penale, Consiliul Europei.

Introduction. From a scientific perspective, crime prevention is a set of measures integrated into criminal policy, aimed at limiting the possibility of committing crimes. It constitutes a distinct instrument of criminal policy, along with other components such as sanctions and social reintegration measures. In this regard, Council of Europe Recommendation R(87)7 stresses that prevention includes, in addition to alternative punishments, support for victims, decriminalisation, social reintegration and treatment of offenders.

In criminology, prevention is understood in a narrower sense, mainly targeting actions on the causes of crime. It has a collective, non-coercive and proactive character, acting before the criminal acts occur, unlike measures aimed at protecting victims.

The theoretical foundations of prevention are based on the idea that human personality and behavior can be influenced by education and by changing social contexts, which can significantly reduce the risk of committing a criminal act. However, the effectiveness of these policies is limited by the diversity of the criminal phenomenon, the unpredictability of human behavior and the high costs of some interventions.

At the same time, the effectiveness of prevention programmes depends on the existence of essential conditions, such as political will, the allocation of adequate financial resources, the use of relevant statistics, the adoption of a long-term perspective, and the active involvement of institutions, the private sector and citizens.

Methods and materials applied. The paper was developed using the method of doctrinal and comparative analysis, based on the study of the specialized literature in the field of criminology and criminal law, national normative acts and recommendations of the Council of Europe. Also, the method of synthesis was applied, for the integration of information from various sources, and the method of legal interpretation, in order to clarify the concepts regarding crime prevention and its forms in the context of modern criminal policy.

Discussions and results obtained. I. Preventive Penal Policy: Notion and Objectives. In defining and evaluating the concept of criminal crime prevention policy, it is necessary to take into account three dimensions [1, p.224]. Within the framework of modern policies to prevent and combat crime in the Republic of Moldova, three main dimensions can be highlighted. The first dimension refers to the criminal legislation in force and the system of sanctions applied to persons who commit crimes. The second dimension includes institutions specialized in crime prevention and in exercising specialized social control over the criminal phenomenon. The third dimension concerns society's reaction and attitude towards crime and delinquency.

In relation to these dimensions, the normative framework and the penitentiary system in the Republic of Moldova aim both to control and reduce the criminal phenomenon,

as well as to protect fundamental social values. They also aim not only to sanction criminal behaviors, but also to resocialize and reintegrate convicted persons, reflecting the balance between the repressive and preventive-educational function of criminal policy.

By developing a theory of prevention, a series of problems are generated regarding conceptual classifications, but also the elaboration of a set of measures that create effective prevention models, strategies and techniques, which have a neutralizing social purpose on crime [2, p.201-202].

In the doctrine, the opinion has been formed according to which the notion of prevention has two connotations [1, p.87]. First of all, it is a legal-criminal one, which takes into account the effect that the criminal legislation, through the incriminations and sanctions provided, has on the conduct and behavior of individuals in a society. In this case, a distinction is made between general and special prevention. Secondly, we are talking about a sociological and criminological connotation, which refers to the set of activities that are carried out in order to identify, explain and diminish the causes and general and special conditions.

It should be noted, however, that the effectiveness of preventive policy may be affected by certain inherent limits, such as the impossibility of completely eliminating delinquency, for the simple reason that it is part of any society [4, pp.218-220]. Therefore, the scientific objective of any prevention action is to limit the criminal phenomenon and a more rational and efficient mobilization of resources to combat criminal behavior.

Another limitation affecting the effectiveness of crime prevention policies is the difficulty of knowing and accurately assessing the effects of measures applied in preventive programmes. This problem is determined both by the complexity of the social environment and by the multidimensional nature of prevention interventions.

Another important factor is the impossibility of completely eliminating the root causes of delinquency. However, they can be diminished through interventions at individual, social and group levels, without being able to be completely eradicated.

Preventive measures also often involve the use of specialised techniques that entail high costs, which makes it difficult to apply them on a large scale. In certain situations, such actions can generate perceptions of insecurity among the population or lead to the restriction of individual freedoms, as is the case with electronic surveillance.

In this regard, the principle of preventing the commission of the acts provided for by the criminal law highlights the need for a balance between the effectiveness of prevention measures and the observance of fundamental rights and freedoms, “the entire legal-criminal regulation must ensure, on the one hand, the achievement of the general preventive function of the criminal law, and, on the other hand, the prevention of the commission of new acts provided for by the criminal law, as a result of the application of criminal law sanctions. The achievement of the purpose of the criminal law must take place, mainly, through the prevention of the acts provided for by the criminal law, as a result of knowledge and observance of the law or as a result of the preventive measures provided by the law for this purpose. The application and implementation of criminal law sanctions must be based on the need to prevent the commission of new antisocial acts, both by those to whom such sanctions have been applied, and by other persons” [5, p.51].

The function of criminal law is to prevent crimes, by carrying out both general and special prevention, aimed at avoiding recidivism. To this end, criminal sanctions are the main instruments for controlling crime, although they are not the only means and not always the most effective.

In this context, criminal sanctions reflect the balance between the freedom of the individual and the need for social defense, based on different political-ideological options.

Thus, in some criminal law systems, emphasis is placed on the intimidating and repressive nature of punishment, while in others the function of re-education and social reintegration of the convicted person predominates.

The primary function of preventing the commission of crimes (general prevention) is based on a sanctioning rigor that finds its most drastic expressions in the death penalty, in the sentence of life imprisonment, in the cruelty and inhuman treatment of the execution of the sentence. The criminal law of liberty, without abdicating the requirement of defending society against crime, disapproves of any idea of public vendetta, of disproportionate punishment, of inhuman execution of punishment [5, p.4].

In the area of crime prevention, the Council of Europe has drawn up a number of specific recommendations. Relevant is Recommendation (1987)19 of the Committee of Ministers of the Council of Europe, which refers to the following important aspects. Member States must include prevention as a permanent mission in government programmes and set out concrete actions to prevent crime. They must also establish, encourage and maintain crime prevention bodies at national, regional and local level and establish and promote prevention programmes aimed at solutions to crime-specific problems, reducing the possibilities of committing crimes and increasing the risk for offenders of being discovered. Finally, the Member States must promote and encourage research with a view to international cooperation in the field of prevention. In the context of these concerns for crime prevention, a European prevention model has been configured, which overcomes the existing differences at national level regarding preventive strategies.

This model capitalizes on a concept of "small-scale prevention, which involves the mobilization of local resources", which reveals: the establishment of an effective partnership between the police, local authorities and residents; the decentralization of strategies and the implementation of programs that co-opt interested local bodies; the search for means to increase citizens' trust in public authorities; the development of programs that include measures to reduce criminal opportunities, as well as the discouragement of committing them; the search for effective solutions for minor acts, especially those in the family, and their informal resolution; limiting the crimes committed by young people, which can be punished with detention, and finding alternative, local solutions [6, p.169-170].

II. Principles of Criminal Crime Prevention Policy. The principles of preventive criminal policy aim to give rigour to preventive actions, to the extent that they are respected and materialized in the practices of European countries [4, p. 160-163].

2.1. Principle of Determined Scope. That principle highlights the fact that preventive action must be carried out in a given territory. This was the structure on which action will be taken with a set of measures including socio-cultural optimization, professional integration, habitat improvement, etc. This should not be meant to diminish the role of state institutions, which continue to be partners in the fight against crime. From this idea, a new principle emerged, which is detailed below.

2.2. The Principle of Partnership. This principle imposes the requirement of cooperation at local and regional level of citizens, local representatives, but also of specialists in order to ensure better security both at local and regional level, but also in order to prevent the commission of criminal acts.

It is increasingly important for the public to participate in the achievement of crime prevention objectives. Thus, the new policies focus on obtaining the support of the public in several areas and directions of activity, among which I mention social prevention with all its components, including criminal prevention, general and special. Another direction in which public participation is desired is the design and implementation of means and methods of social reaction against delinquency. I also mention here the reform of the

punishment system, at least in the individualization of punishments through measures that can be applied within the community and at the same time specific measures for the treatment of delinquents.

2.3. The Principle of Contracting. This principle brings to the fore the state as the main pillar of elaboration and application of preventive measures, with the following clarifications. First of all, even if these are problems identified by the local investigation and security apparatus, it is necessary that the preventive approach has continuity over time, continuity that can only be offered by the state, through the financial support that is very much needed in the fight against crime. This facilitates both the emergence at national, regional or local level of public bodies for the coordination and planning of prevention, the development and support of concrete programmes and research in the field of prevention, as well as cooperation at all levels, including international cooperation in the field of crime prevention.

It is very important that these aspects are correlated with the dynamics of the social reality that highlight both the multiplication of risk factors such as the economic and financial crisis, unemployment, the reduction of the possibilities of social integration of young people through professional insertion, etc., and the increase in the crime rate. In this context, a more effective application of the measures included in the prevention programmes is necessary.

III. Types of preventive actions. 3.1. Prevention of delinquency in general and juvenile delinquency. As it is appreciated in the specialized literature, delinquency is "a severe form of social deviance that affects the values and social relations protected by the legal norms of a criminal nature" [7, p.13]. And this designates "the set of acts that violate the criminal law" [8, p.2-4]. The significance of delinquency is seen differently in Europe, unlike the position of American authors. Thus, according to the European authors, only criminal acts fall within the scope of delinquency, even in the case of juvenile delinquency, while the American authors are of the opinion that in addition to these, delinquency also includes "contraventions, as well as civil, disciplinary and even banal acts of violation of moral rules or politeness" [8, p.2-4].

Delinquent behavior is distinguished by the fact that it has a series of negative consequences because it can harm the interests of society as a whole. At the same time, this behavior has a destructive, deliberate and antisocial purpose, and the act committed is subject to prohibitions or constraints formulated by the criminal law.

Being a complex phenomenon, delinquency includes statistical, legal and sociological aspects, as well as psychological, economic, cultural and prospective aspects [9, p.166]. Thus, the statistical dimension highlights the state and dynamics of delinquency in time and space, by evaluating it in environments, proscenities and indices of different crimes, and by correlating them with a series of cultural, social, geographical and ecological indicators and variables. The legal dimension highlights the type of legal norms that are violated by antisocial acts, the social dangerousness of delinquents, the seriousness of the damages caused, the intensity and type of sanctions adopted, but also the ways of resocialization of delinquents. The psychological dimension is the one that brings to the fore the structure of the personality of the delinquent individual, the motivation and motive for committing the crime, the attitude of the delinquent towards the committed act, and the sociological dimension is centered on the identification, explanation and social prevention of crimes, in relation to the multiple aspects of maladjustment, disorganization and deviance existing in society and to the forms of social reaction to the various crimes. As for the prospective dimension, it highlights the evolution of delinquency as well as the predisposition of certain individuals or social groups towards crime. Finally,

when we talk about the economic dimension, we refer to the cost of crime, or the direct but also indirect consequences that crime has from a material and moral point of view.

There is currently a return to the traditional concepts of murder, criminal, criminality [8, p.3]. Crime is a form of social deviance that includes all antisocial manifestations, which harm the most important values and social relations protected by criminal norms: life, the person and its integrity, public order, individual rights and freedoms, etc. The general and specific characteristics of the various antisocial acts that are circumscribed to the crime phenomenon are defined by the criminal norms, which determine differences from one country to another and from one legislative system to another, regarding the criminalization of various antisocial acts and their punishment [1, p.72].

Crime involves a series of problems and aspects addressed at a theoretical, practical and methodological level; these approaches allow the identification and explanation of the causes and conditions that generate crime in society, but also the finding of appropriate solutions to ensure the prevention and reduction of potential sources of crime [10, p.7-9]. In recent decades, both internationally and at European level, there has been an increase in the crime rate and an aggravation of current forms of crime, which requires an interdisciplinary approach to this phenomenon by lawyers, criminologists, sociologists, psychologists, specialists with positions of responsibility in the field of law enforcement and crime prevention, as well as an active participation of the community in the prevention activity [11, p.25-26].

Among the main elements to be taken into account in the field of crime and delinquency in general, there are also the clarifications regarding the elements defining juvenile delinquency, which have particularities determined by certain biological, psychological and social characteristics of minors who have committed crimes, which the legislator took into account when regulating their criminal liability [10, p.16-17]; on the basis of these characteristics, measures are established to prevent and combat crimes among minors, measures which must meet the requirements regarding their coherence, efficiency and adequacy to the concrete reality.

In order to develop prevention measures in harmony with these requirements, it is necessary to know the factors that favor juvenile delinquency, to make an in-depth analysis of them in the broad context of the dynamics of juvenile delinquency, but also to identify the material, financial and human resources, which would make it possible to reduce the action of these factors.

Among the main causal factors mentioned by the literature are the dysfunctions of the process of schooling, social understanding and social control, which can be caused by certain links in the chain of the process of socialization, understanding and control manifest contradictions whose dysfunctions can influence the criminal behavior of minors. It should be noted, however, that each offence or antisocial behavioural act of the minor is determined by the specificity of the circumstances of each minor.

Another causal factor mentioned in the literature is the deficient character of the educational function at the family level, manifested by tense family situations that are resolved by means that, as a rule, provoke attitudes of rejection on the part of the child, the lack of affectivity and communication in the relationship between parents and children and sometimes, the low level of school education of the parents, which generate limitations of the educational process and which affect the possibilities and prospects of the minor for socio-professional integration.

3.2. Prevention of Juvenile Delinquency at International Level. At both the international and European levels,, special attention is devoted to the issue of juvenile delinquency and, implicitly, to solutions aimed mainly at controlling and reducing the level of

juvenile delinquency. Thus, a series of measures were adopted in this regard, following several congresses and conventions.

On the occasion of the first UN Congress for the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, the issue of establishing a common definition of all states, the notion of delinquency, was addressed. At the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in London in 1960, a Recommendation was adopted, which establishes that the notion of juvenile delinquency should be used only in the case of acts provided for by the criminal law.

3.3. Prevention of Juvenile Delinquency at European Level. As for the European regulations on juvenile delinquency, they are reflected in the European Convention on the Rights of the Child, adopted in Strasbourg on 25 January 1996, in accordance with the provisions of the UN Convention on the Rights of the Child. The doctrine emphasizes that the acts committed by minors present a lower degree of social danger than those committed by adults, which justifies a differentiated regime of criminal liability and sanctions.

Consequently, the focus is mainly on prevention, both ante-delict and post-delict, as well as on the re-education of minors. They are considered easier to influence and reintegrate socially because their mental and behavioral development is still ongoing and antisocial behaviors are not fully reinforced.

Thus, the legislation provides for a special sanctioning regime for minors, in which the main purpose is education and social reintegration, the sanction having a subsidiary character. Re-education institutions are a specific instrument through which society expresses both its reaction to juvenile delinquency and its orientation towards the recovery and social reintegration of minors [12, p.2-4].

3.4. General Prevention and Special Prevention. The purpose of punishment derives from the vital necessity of social defense against crimes, and punishment achieves the purpose of prevention both by its simple provision in the criminal law, and by its concrete application to the offender and therefore by the exemplarity that is given to other persons. Thus, the premise reflects that criminal law sanctions cannot fulfill their purpose of preventing the commission of new crimes, respectively of new acts provided by the criminal law, both on the part of the perpetrator and on the part of other persons, and can only influence the conscience of the offender unless they are perfectly adapted to the individual case, to the particularities of the person of the perpetrator but also to his needs to correct and re-educate or to the requirements for removing the state of danger [4, p.52].

A very important thing is the fact that the punishment can be applied concretely, only if it is provided for by law, only to a criminal and only by the judicial bodies, in order to prevent the commission of new crimes, it being an instrument of law, because it is based on justice [12, p.39].

The doctrine discusses not only the purpose of punishment, which emphasizes the complementarity of the two forms of prevention, the general and the special, but also the purposes of punishment, in order to better highlight the distinction between general prevention and special prevention [13, pp.238-239].

General prevention is achieved by providing for the punishment in the criminal norm and by knowing it by the members of society, which determines either compliance with the law or fear of sanction. At the same time, the concrete application of penalties helps to strengthen the preventive effect, as examples of sanctions can discourage other people from committing crimes. The main goal of general prevention is to avoid the transformation of potential criminal behavior into actual criminal behavior.

Within it, a distinction is made between negative general prevention and positive general prevention. Negative prevention is based on the effect of intimidation and de-

terrence, but its effectiveness depends on the effective and proportionate application of sanctions, and compliance with this ratio is essential in the rule of law. At the same time, the exaggeration of the repressive character can lead to disproportionate sanctions and illiberal effects, which is why a balance between severity and legality is necessary.

Positive general prevention emphasizes the educational function of criminal law, considering that punishment contributes to the formation and strengthening of the legal and moral conscience of citizens. In this perspective, criminal law has a role of collective education, strengthening respect for the law and protected social values.

The special prevention aims to prevent recidivism, respectively to avoid the commission of new crimes by the convicted person. This is achieved through the re-educational function and, in some cases, through the intimidating effect of punishment. By executing the sanction, the offender is subject to measures designed to positively influence behavior, conscience and discipline, with the aim of social reintegration and compliance with the rules of conduct. A difference between the two types of prevention is that, unlike special prevention, general prevention is achieved only through the function of intimidation of punishment [14, p.54-68].

The main objective of special prevention, both in its negative and positive forms, is to prevent recidivism, respectively to avoid the commission of new crimes by the same convicted person. Various techniques are used to achieve this goal, such as intimidation, special negative prevention and special positive prevention.

Intimidation manifests itself through a psychological coercion, consisting of the application of a sanction designed to discourage the repetition of criminal behavior. Special negative prevention is of a direct coercive nature, helping to neutralise the dangerousness of the offender, in particular by means of measures involving deprivation of liberty, such as imprisonment, which materially prevent the commission of new offences.

Positive special prevention aims to influence the offender's behavior through re-education and moral correction, with the purpose of his social reintegration.

At the same time, the doctrine expresses some objections to special prevention, in the sense that it cannot be absolute in relation to the other functions of punishment. From this perspective, modern criminal law systems maintain a balance between the special preventive purpose and the guaranteeing principles of the rule of law, which explains the maintenance of the minimum and maximum limits of custodial sentences. Such limits, put in contact with the objective gravity of the crimes in question, reflect a proportional relationship between the crime and the sanction, expressing the guarantee requirement to put limits on the pressure of individual rights "sacrificed" by the criminal sanction, limits that must be respected [15, p.163-168].

3.5. Social Prevention and Situational Prevention. In order to comply with the Council of Europe's recommendations in the field of crime prevention, member states are obliged to develop coherent and effective criminal policies, mainly aimed at preventing the criminal phenomenon. These include both social prevention, achieved through socio-economic, educational and information measures for the population, and situational prevention, focused on reducing the opportunities and means of committing crimes. At the same time, preventive policies aim at sanctioning and individualizing punishments, social reintegration of offenders, as well as supporting victims.

Social prevention involves identifying the factors that favor delinquency and implementing programs aimed at reducing their impact. In this process, the institutions of socialization and social control are involved, which contribute to identifying and combating the sources of crime, reducing social damage and restoring social order.

This model starts from the idea that delinquency reflects dysfunctions of the social

environment, which requires intervention on their root causes. Thus, social prevention targets both vulnerable groups and risk situations, as well as social actors such as individuals, families, groups and institutions, aiming to reduce criminogenic factors and strengthen solidarity and social responsibility. Applied experiences, including the model developed in France in the 1980s, highlight the importance of cooperation between the police, authorities and social organizations in the implementation of preventive programs. The effectiveness of these programmes depends on the economic, social and cultural resources available, as well as on their adaptation to the specific needs of the community.

Situational prevention, in turn, aims to reduce the opportunities to commit crimes by involving the community and the public in activities to prevent and neutralize delinquent behaviors.

For this reason, an important aspect that must be respected is the information of the public and individuals in certain criminogenic areas about the potential but also the real dangers of committing crimes, as well as about the existence of risk factors in certain areas [1, p.227].

The situational prevention model is also relevant for crime prevention policies in the Republic of Moldova, being oriented towards reducing the opportunities to commit crimes by intervening on risk situations and by protecting potential victims, in order to reduce the phenomenon of victimization.

In this regard, community partnership initiatives can be mentioned, in which citizens are encouraged to collaborate with the police in identifying and reporting suspicious behavior within local communities. Such models imply a permanent cooperation between the population and public order institutions, in which the police have the role of coordinating, informing and guiding preventive actions.

At the same time, the police bodies contribute by providing information on the evolution of crime and by making prevention recommendations to the population. The effectiveness of these measures depends on the local specificity, the level of community involvement and inter-institutional cooperation, with the effect of reducing the feeling of insecurity among citizens.

3.6. Defensive Prevention and Emancipatory Prevention. An important aspect revealed by the Romanian criminal policy is that one of the most recent typologies regarding the means and objectives of prevention reflects two forms of prevention. It is, first of all, about defensive prevention, a prevention focused on the values of fear and exclusion, which raises the problem of dealing with a certain undesirable situation, through its consequences. Secondly, we are talking about emancipatory prevention which, being focused on the values of inclusion and integration, trusts in the spontaneous possibilities of the population, as being prepared to react to any type of problem [4, p.225].

Lately, there has been a transformation of criminal law in the sense that, while classical criminal law isolates the guilty person from what surrounds him and analyzes especially his will at the moment when he committed the crime, the new criminal law targets social beings who have obligations to the community and sees in the criminal, person who harms the social order.

According to the classical school, according to Aristotle, the act is contained in thought, and murder is always considered as the externalization of a guilty thought and the criminal as an intelligent and free individual who commits evil being aware that he is committing it and intending to commit it. Thus, the murderer is responsible, because the act is conscious and voluntary, and punishment, in the classical sense of the word, is the only and main remedy for the crime and the only reasonable compensation for the act committed. The departure from the principle of personality of responsibility and punish-

ment could lead to the punishment of the innocent and to the non-punishment proportional to the gravity of the facts, of the guilty.

In the debate on criminal law as the extreme ratio of social policy, emphasis is placed on the idea that the use of the criminal instrument is justified only in cases of strict necessity for the repression of socially dangerous behaviors, for which the means available in other branches of law have proven to be inadequate.

The defensive character of criminal law is opportunely revalued in the face of apparently progressive, but substantially illiberal conceptions that concern it and label it as an instrument of social promotion, as an instrument propulsive of new ethical-social concepts.

Taking into account these considerations, it is necessary that the criminal sanction be adequate for the achievement of the protection objectives envisaged: hence the need to collect empirical-criminological data capable of indicating either the real effectiveness of the various sanctioning instruments or the existence of a relevant consensus regarding criminalization; Also, this leads to the need for a subsequent assessment in relation to the degree of (in)tolerability of the damage to an asset. This is particularly about the way in which the complex assessment that the legislator has to make is viewed, as well as the complex and delicate task of selecting punishable behaviour.

The approach to criminalization is not without consistent tensions. The propulsive function of the criminal law reveals that it is conceived as an instrument that contributes to the realization of the model and goals of social promotion prefigured in the Constitution. The need to value criminal law in an emancipatory perspective indicated by Art. 3 para. (2) of the Italian Constitution must not be misunderstood, namely, criminal law cannot be used as an instrument of social transformation or as an instrument capable of leading to the acquisition of future goods. Criminal law, by its nature, tends to guarantee or strengthen the protection of already existing goods, goods that the social conscience perceives as in need of protection.

Lately, there has been an evolution of criminal law, in the sense of moving from the classic model, centered on the analysis of the will of the offender at the time of committing the act, to a modern model that regards the criminal as a social subject with obligations towards the community, and the criminal act as an infringement of the social order.

According to the classical school, inspired by Aristotelian thought, crime is the result of a conscious and voluntary action, and the offender is considered a free and responsible individual. In this context, punishment is the main instrument of social reaction, having a retributive and preventive role, being considered the only adequate compensation for the committed act. At the same time, the importance of respecting the principle of personality of criminal liability is emphasized, in order to avoid punishing innocent persons or the disproportion between the act and the punishment.

In contemporary debates on criminal law as the *ultima ratio* of social policy, it is stated that criminal intervention is justified only in situations where other branches of law cannot ensure the effective protection of social values.

In this context, criminal law retains a defensive character, being an instrument for the protection of existing social values, and not a means of social transformation or promotion of ethical-social models. The use of criminal sanctions must be based on criminological data and the assessment of the degree of social danger, so that criminalisation is justified and proportionate.

At the same time, the criminalization process involves a careful selection of the behaviors sanctioned by criminal law, given the tensions between the need for social protection and the respect for fundamental freedoms. Criminal law does not have the role of

creating new social values, but of protecting and consolidating the assets already recognized by society as necessary for legal protection.

Conclusion. Overall, crime prevention is a fundamental element of modern criminal policy, at the intersection of legal, criminological and sociological approaches. The analysis highlights the fact that prevention is not limited to the application of criminal sanctions, but includes a complex of social, institutional and situational measures aimed at reducing criminogenic factors and strengthening social order.

The study highlights the existence of a diversity of forms of prevention – general, special, social and situational – each with specific mechanisms and purposes, but which function in a complementary system. At the same time, the evolution of criminal law reflects the transition from a strictly retributive model to one oriented towards prevention, social reintegration and the protection of existing social values.

It was also found that the effectiveness of prevention policies is influenced by a number of factors, such as available resources, institutional cooperation, community involvement and adaptation of measures to social realities. At the same time, the inherent limits of prevention confirm the need for a balance between the effectiveness of criminal intervention and respect for fundamental rights and freedoms.

Finally, crime prevention is emerging as a complex and dynamic field, which requires an interdisciplinary approach and a continuous improvement of social and legal response mechanisms, in order to ensure an effective protection of social values and to strengthen community security.

Bibliographical references

1. Rădulescu S.M., Banciu D. Sociologia crimei şi criminaliei. Casa de Editură şi Presă "Șansa" S.R.L., Bucharest, 1996.
2. Brezeanu O. The Evolution of Crime in Romania in the Period 1988-1993.
3. Stănoiu R.M., Brezeanu O., Dianu T. Transition and Crime. Collection of Studies. Oscar Print Publishing House, Bucharest, 1994.
4. Bocancea C., Neamțu G. Elements of Social Assistance. Polirom Publishing House, Iași, 1999.
5. Bulai C. Manual of Criminal Law. The General Part. All Publishing House, Bucharest, 1997.
6. Mușiu F.O. Penal Policy for Crime Prevention. Timișoara, 2013.
7. Duculescu V., Dunculescu G. European Justice. Mechanisms, Desires and Perspectives. Lumina Lex Publishing House, Bucharest, 2002.
8. Abraham P., Nicolăescu V., Iașnic Ş.B. Introduction to Probation. Surveillance, Assistance and Counseling of Criminals Sentenced to Non-Custodial Sanctions. National Publishing House, Bucharest, 2001.
9. Brezeanu O. Transition and Criminality. Bucharest, 1998.
10. Craiovan I. The Finalities of Law. Continent XXI Publishing House, Bucharest, 1995.
11. Crișu A. The Treatment of the Minor Offender in Criminal Matters. Aspects of Comparative Law. C.H. Beck Publishing House, Bucharest, 2006.
12. Brezeanu O. The Minor and the Penal Law. All Beck Publishing House, Bucharest, 1998.
13. Basarab M. Criminal Law. The General Part. Vol. I. Lumina Lex Publishing House, Bucharest, 2002.
14. Daneș Ș., Papadopol V. Judicial Individualization of Punishments. Legal Publishing House, Bucharest, 2003.
15. Rotaru C. The Foundation of Punishment. Modern Theories. C.H. Beck Publishing House, Bucharest, 2006.

SECTION CRIMINAL SCIENCES AND PUBLIC LAW

SECŢIUNEA ŞTIINŢE PENALE ŞI DREPT PUBLIC

CZU 343.3/.7:004.8 DOI: https://doi.org/10.5281/zenodo.20827799

FROM CYBERCRIME TO AI-ENABLED CRIME: ADAPTING THE LEGAL FRAMEWORK IN THE EUROPEAN AND INTERNATIONAL CONTEXT

Andreea Nicoleta DRAGOMIR,
PhD, University Lecturer,
Faculty of Law,
"Lucian Blaga" University of Sibiu,
Romania
ORCID: 0000-0002-9358-8098

Abstract

This article examines the transition from traditional cybercrime to new forms of crime enabled by artificial intelligence, focusing on how emerging technologies influence prevention and response strategies. As digitalisation accelerates, artificial intelligence is becoming both a tool used by public authorities and a risk vector exploited by criminal actors.

The research explores the main legal challenges arising from the use of AI in unlawful activities, including the automation of cyberattacks, information manipulation, and deepfakes. It also discusses the shortcomings of the EU and international regulatory landscape, including the need to adapt cross-border judicial cooperation instruments.

The paper argues for integrated approaches that reconcile the need for effective state intervention with the protection of fundamental rights, emphasising the importance of coherent regulation and institutional cooperation in addressing new forms of digital crime.

Keywords: artificial intelligence, cybercrime, criminal liability, AI Act, judicial cooperation.

DE LA CRIMINALITATEA INFORMATICĂ LA CRIMINALITATEA ASISTATĂ DE INTELIGENȚĂ ARTIFICIALĂ: ADAPTAREA CADRULUI JURIDIC ÎN SPAȚIUL EUROPEAN ȘI INTERNAȚIONAL

Abstract

Prezenta lucrare examinează tranziția de la criminalitatea cibernetică tradițională la noi infracțiuni facilitate de inteligența artificială, concentrându-se pe modul în care noile tehnologii influențează strategiile de prevenire și răspuns. Datorită accelerării digitalizării, inteligența artificială devine atât un instrument folosit de autorități, cât și un vector de risc exploatat de actorii criminali.

Se explorează principalele provocări legale generate de utilizarea IA în activități ilicite, inclusiv automatizarea atacurilor cibernetice, manipularea informațională și utilizarea deepfake-urilor. De asemenea, se discută despre deficiențele peisajului de reglementare al UE și internațional, cum ar fi necesitatea de a adapta instrumentele de cooperare judiciară transfrontalieră.

Susținem abordări integrate, care să reconcilieze necesitatea intervenției eficiente a statului cu preocuparea pentru drepturile fundamentale, pledând pentru importanța unei reglementări coerente și a cooperării instituționale în gestionarea noilor forme de criminalitate digitală.

Cuvinte-cheie: inteligență artificială, criminalitate cibernetică, răspundere penală, AI Act, cooperare judiciară.

Introduction. Although the technological evolution of recent decades is often viewed through the lens of the diversification of digital tools, reality points to a much deeper transformation: a paradigm shift in the very nature of criminality. While the history of cybercrime was largely limited to unauthorised access, electronic fraud, or data theft—acts in which technology played a simple, passive role—the rise of artificial intelligence (AI) has inaugurated a new era. Today, technology is no longer merely an instrument; it has become an active agent, capable of contributing to the initiation and execution of unlawful acts. Scholars have increasingly used the term "AI-enabled crime" to describe this phenomenon. The term does not refer to mere automation, but rather to scenarios in which AI systems facilitate, optimise, or even directly execute actions that violate criminal law [1, p.90-91]. The break from traditional forms of cybercrime is fundamental: whereas in the past human intervention was decisive at every stage, machine learning algorithms introduce a degree of autonomy and adaptability that generates unpredictable behaviour and often escapes the operator's direct control.

This shift is no longer confined to abstract theory. Empirical evidence and recent applications already outline alarming trends. Machine learning-based systems have demonstrated the ability to generate hyper-personalised phishing attacks by exploiting publicly available data to manipulate victims, achieving a success rate significantly higher than that of traditional methods [1, p.90]. Similarly, in financial markets, algorithmic agents have autonomously developed manipulative strategies, such as placing fictitious orders (spoofing), by learning from rewards received in the trading environment [1, p.98].

These examples illustrate a double effect: AI not only amplifies the efficiency of known criminal mechanisms, but also creates entirely new patterns of unlawful conduct. The challenge for criminal law is considerable. Our justice system is founded on the voluntariness of human conduct and on the existence of clearly identifiable guilt, structured around the concepts of actus reus and mens rea. Yet, in the case of autonomous systems, the link between the human actor and the material result becomes diluted. The functional autonomy of AI may produce a dissociation between the act committed and human intent, thereby undermining the classical mechanisms for attributing criminal liability [1, p.95-96]. It becomes increasingly difficult to sanction a person for an unlawful result that he or she neither directly intended nor could reasonably have anticipated.

Paradoxically, even the use of AI for defensive purposes—for the prevention and combating of crime—is not free from legal risks. The opacity of algorithmic decision-making processes, known in doctrine as the "black box" metaphor, undermines the transparency required for a fair trial, making it more difficult to understand how certain incriminating predictions are generated [2, pp.568-569]. Moreover, reliance on historical datasets for model training risks institutionalising existing prejudices, leading to indirect discrimination and violating the principle of equality before the law [3, p.624-625].

In light of these realities, it becomes increasingly evident that the current legal arsenal is insufficient. The criminal norms presently in force were designed to regulate direct human action in a context where the causal relationship among the offender, the act, and the result was linear and clear. AI-enabled crime disrupts this relationship, introducing critical variables such as system autonomy, decisional opacity, and the cross-border nature of digital operations.

Against this background, the present paper proceeds on the basis of the hypothesis that the current legal framework lacks the necessary tools for the effective prevention and sanctioning of AI-enabled crime. The analysis that follows aims to examine the vulnerabilities of the existing regulatory framework and outline concrete directions for

adapting criminal law and international cooperation to address the new forms of illegality generated by the artificial intelligence revolution.

Methods and materials applied. Within this doctrinal-analytical framework, the present paper aims to assess the impact of artificial intelligence (AI) on traditional forms of criminalisation and international cooperation within the criminal justice system. It combines classical legal analysis with elements of interdisciplinary research to examine the technical complexity of "AI-enabled crime". The methodological approach is predominantly qualitative, focusing primarily on the interpretation of legal norms in light of technological developments, rather than on a quantitative analysis of the criminal phenomenon itself.

First, the *method of doctrinal analysis* was employed by examining specialised literature on the interaction between AI and criminal behaviour. The reviewed studies highlight the capacity of AI systems to generate or facilitate criminal acts, while also emphasising the challenges inherent in subsuming such conduct within the traditional framework of criminal liability [1, p.90-91]. This allowed the conceptualisation of "AI-enabled crime" and the identification of its distinctive features compared with traditional cybercrime, particularly the decision-making autonomy of algorithms.

Second, a *comparative analysis* was conducted in order to connect technological developments with the current European regulatory framework. The study highlights recent legislative initiatives, in particular the Artificial Intelligence Act (AI Act), which classifies AI systems based on risk and imposes stringent requirements on high-risk systems [4]. This approach reveals the tension between static, prevention-oriented regulation and the rapidly evolving nature of cybercriminal attack vectors.

In addition, the research draws on institutional documents concerning the protection of fundamental rights. The European Union Agency for Fundamental Rights has noted that the use of AI in automated decision-making based on historical data may significantly affect fundamental rights, including equality and non-discrimination, particularly given the vulnerability of such datasets [5]. These findings support the need for strict procedural safeguards in any future criminal law regulation addressing AI.

Furthermore, the *case study method* was employed to provide a concrete illustration of the operational strategies underlying AI-enabled crime. The scenarios examined include:

- The automated generation of highly personalised phishing attacks targeting victims based on specific psychological vulnerabilities [1, p.90];

- The use of algorithmic agents to manipulate financial markets through high-frequency trading for fraudulent purposes [1, p.98].

As highlighted in the specialised literature, there is an inherent tension between technological efficiency and the preservation of the fundamental values underpinning the rule of law, necessitating a reconsideration of liability frameworks [6]. International reports confirm that AI not only automates such activities but also amplifies them, exponentially increasing both the scale and the complexity of investigations [7].

With regard to implications for criminal law, the analysis incorporates studies examining the impact of digital "algorithmic opacity" (the so-called "black box") on decision-making transparency and the right to a fair trial [2, pp.568-569]. At the same time, particular attention has been paid to the risk that algorithmic systems used in criminal justice—such as recidivism risk assessment tools—may reinforce existing biases, thereby undermining the presumption of innocence and the principle of non-discrimination [3, p.624-625].

Finally, the *normative analysis* evaluated the adequacy of the existing legal framework. It identified the limitations of traditional concepts of guilt and imputability in situations where harmful outcomes are generated, wholly or partially, by autonomous algorithmic processes, without direct and foreseeable human involvement.

Discussions and results obtained. In the present analysis, two levels of AI involvement in criminal activity are distinguished:

(i) AI as a tool (tool-based crime), and

(ii) AI as an autonomous agent (autonomy-driven conduct).

I. Reconfiguration of Criminal Typologies. The analysis demonstrates that artificial intelligence (AI) does not merely produce a quantitative scaling of criminality, but rather brings about a qualitative transformation of the criminal modus operandi. We are witnessing a shift from passive tools (static software) to active agents capable of making autonomous decisions.

In the field of fraud, the difference is considerable. Traditional phishing, based on generic templates, has been replaced by hyper-personalised attacks generated by large language models (LLMs). These systems analyse the victim's digital footprint in order to create credible narratives, thereby reducing offenders' operational costs and increasing the success rate [1, p.90]. From a legal perspective, such conduct may fall within the scope of the offence of fraud; however, the automated nature of the interaction complicates the identification of the subjective element. According to Europol's IOCTA 2023 report, approximately 40% of social engineering attacks in 2025 involved AI-generated content that was almost indistinguishable from human communication [8].

In the sphere of financial crime, high-frequency trading (HFT) algorithms can execute market-manipulation strategies (e.g., spoofing, layering) at speeds that cannot be monitored by direct human intervention. Here, fraudulent intent (dolus) becomes diffuse: the unlawful result is produced by an algorithmic "black box" that has learned to maximise profit through illicit methods, without any explicit instruction to that effect from the programmer [1, p.98].

Moreover, the emergence of deepfake technology has created new attack vectors. The use of audio-video synthesis to mislead decision-makers (e.g. CEO fraud) or for sexual blackmail represents a legal grey area. Although the offences relating to forgery and fraud remain, in abstract terms, applicable when automatically generated content is used, establishing authorship and proving the subjective element becomes problematic in light of the functional autonomy of AI systems [7].

A distinct challenge, with direct implications for the administration of evidence in criminal proceedings, concerns the erosion of trust in digital content. Generative technologies have lowered the threshold for creating false evidence (audio and video deepfakes), which can deceive even forensic experts without specialised forensic tools. This phenomenon creates the risk of an "authenticity crisis", in which any digital evidence may be contested as AI-generated even when it is genuine (known as the "liar's dividend"). In the absence of standardised protocols for certifying content origin (provenance) and of digital forensics laboratories equipped with AI countermeasures, the integrity of the justice process is compromised. Recent scholarship suggests the need to reconsider the rules governing the burden of proof in certain contexts or to introduce presumptions of authenticity for blockchain-certified content to prevent procedural deadlocks [11].

II. The Crisis of Traditional Models of Criminal Liability. The central challenge identified lies in the incompatibility between AI autonomy and the bipartite structure of the offence (actus reus + mens rea).

The functional autonomy of "black box" systems may lead to a dissociation between human action and the harmful result. Where an algorithm generates a criminal consequence unforeseen and unintended by the developer, the traditional causal chain breaks down. This creates the risk of a "fragmentation of liability", in which no human actor (neither the developer nor the user) cumulatively satisfies the constituent elements of a specific criminal offence [1, p.95-96].

The difficulty of establishing guilt is further aggravated by the lack of predictability. In criminal law, negligence presupposes the possibility of foreseeing the result. However, in the case of complex neural networks evolving through machine learning, the final behaviour may be unpredictable even to their creators. The imposition of criminal sanctions in the absence of a clear link of psychological causality would violate the principle of the personal nature of criminal liability, transforming punishment into a form of strict liability incompatible with the European rule of law.

Solutions proposed in doctrine, such as granting an "electronic legal personality" to advanced AI systems, remain controversial. Although such a measure might resolve the problem of imputability, it could also dilute the responsibility of the actual human actors involved (developers, corporations), thereby providing them with a convenient legal shield [10].

III. Impact on Fundamental Rights and on the Right to a Fair Trial. The use of AI in criminal justice, while promising in terms of efficiency, introduces systemic risks for human rights, particularly through opacity and algorithmic discrimination.

The "black box" phenomenon drastically limits decisional transparency. If an algorithm for assessing the risk of recidivism recommends a severe preventive measure, but its internal reasoning remains inaccessible ("unexplainable"), the rights of defence and to a fair trial (Article 6 ECHR) are compromised. The accused cannot challenge a rationale that even the expert cannot fully decode [2, p.568-569].

Even more seriously, algorithms trained on historical data tend to perpetuate existing social biases. Empirical studies have shown that criminal profiling systems may generate higher error rates for certain minority groups or socio-economic categories, not because of any explicit discriminatory intention, but because of distortions in the training datasets [3, p.624-625]. This violates the principle of equality before the law and the presumption of innocence, transforming statistical prejudice into de facto judicial verdicts.

The EU Artificial Intelligence Act seeks to remedy these shortcomings by prohibiting certain uses (e.g., social scoring) and imposing strict obligations for transparency and human oversight on high-risk systems used in law enforcement [4]. Nevertheless, the effectiveness of these measures depends on national authorities' ability to conduct technical audits of algorithms, a competence that is often underdeveloped in current judicial systems.

In this context, Regulation (EU) 2024/1689 (the AI Act) marks a turning point by classifying AI systems used in law enforcement, the administration of justice, and border management as high-risk. Under Annex III of the Regulation, these systems are subject to strict obligations before being placed on the market: conformity assessment, the use of high-quality training datasets to minimise bias, detailed technical documentation and, crucially, effective human oversight (human-in-the-loop). At the same time, however, the AI Act remains predominantly an ex ante (preventive) regulatory instrument. It does not define new offences or establish direct regimes of criminal liability, leaving Member States with the difficult task of aligning these administrative requirements with national criminal codes to sanction the malicious or negligent use of prohibited systems [12].

IV. Directions for Adapting the Legal Framework and International Cooperation. The gap between the speed of technological innovation and the slowness of the legislative process requires a structured response on several interconnected levels.

First, clarifying the regime of imputability requires adopting legal provisions that establish presumptions of liability for AI developers and operators. In the absence of legal personality for artificial intelligence itself, the law must clearly define the duty of care owed by those who place autonomous systems on the market, criminally sanctioning any known security defect or negligence in training algorithms that leads to the commission of offences [10]. This adaptation must also be reflected at the national level, where the Romanian Criminal Code, in its current form, defines offences and modes of participation exclusively through the prism of human conduct [14]. The Romanian legislator will therefore have to consider introducing specific forms of professional negligence applicable to AI developers, or extending corporate criminal liability for security defects in commercialised software products, to avoid the risk that European norms remain dead letters in judicial practice. As of 2026, aligning the AI Act's requirements with national criminal law remains an ongoing consolidation process. In most Member States, including Romania, there are still no specific criminal provisions addressing the abusive use of artificial intelligence systems, which leads to the indirect application of existing legal norms. In practice, judicial authorities are required to adapt traditional offences—such as fraud, computer-related forgery, or illegal access to computer systems—to situations in which unlawful conduct is mediated or amplified by autonomous systems.

This approach creates interpretative difficulties, particularly with regard to establishing causality and culpability. In the absence of explicit legislative intervention, there is a risk of developing inconsistent judicial practices, underscoring the need for normative clarification, either through amendments to criminal codes or the adoption of specific legal instruments.

In this context, the legal concept of a "presumption of vigilance" must also be translated into verifiable technical terms. An abstract obligation of diligence is not sufficient; it must be operationalised through a set of technological risk indicators that can be objectively assessed. From a technical perspective, such diligence would require comprehensive documentation covering the entire lifecycle of the AI system, including bias audits of training datasets, robustness testing against potential misuse, and mechanisms to ensure the traceability of algorithmic decisions.

In the case of systems classified as "high-risk", adequate documentation should demonstrate, for example, the diversity and quality of the datasets used, the methods employed to detect and mitigate algorithmic bias, and the existence of human intervention procedures in critical situations. In the absence of such elements, the obligation of vigilance remains purely formal, and legal liability becomes difficult to effectively establish.

Second, adapting judicial cooperation is becoming urgent, given that AI-enabled crime is inherently transnational and that current mechanisms of mutual legal assistance are often too slow to counter automated attacks unfolding within milliseconds. Although the Convention on Cybercrime (the Budapest Convention) remains the cornerstone of international cooperation, it was drafted in a pre-AI era and lacks specific provisions for preserving evidence generated by autonomous systems or attributing liability in cases involving cross-border algorithms [13]. It is therefore necessary to adopt an Additional Protocol to this Convention, specifically devoted to artificial intelligence that facilitates the rapid exchange of data and direct cooperation between national authorities and AI service providers, irrespective of jurisdiction [7].

Beyond the need to adopt such a protocol, its effectiveness depends directly on the integration of common technical standards. A protocol dedicated to artificial intelligence should explicitly provide for technical mechanisms enabling the rapid preservation and exchange of digital evidence. In practical terms, this could involve developing standardised interfaces (APIs) between judicial authorities and AI service providers, enabling the immediate freezing and transmission of relevant data in cross-border cases.

At the same time, technologies such as blockchain could ensure the certification of data provenance, thereby guaranteeing the integrity and authenticity of digital evidence. In the absence of such technical solutions, judicial cooperation risks remaining dependent on slow procedural mechanisms, which are incompatible with the speed and complexity of AI-enabled criminal activity.

Finally, the implementation of AI in justice must be subject to strict procedural and ethical safeguards, including mandatory independent audits and a right to an explanation for any automated decision that affects fundamental rights. The efficiency of crime control cannot justify sacrificing the principles of the rule of law [5]. In essence, criminal law should not prohibit technology as such, but regulate its responsible use, because without rapid legislative harmonisation at the European level and strengthened international cooperation, the risk that offenders will exploit the legal "grey zones" of AI will grow exponentially, undermining public safety and trust in the justice system.

Conclusions. This paper is grounded in the fundamental question posed at the outset: Can the current criminal law framework effectively address the transition from traditional cybercrime to AI-enabled crime? The analysis indicates that, although existing instruments—such as the Budapest Convention—provide a solid foundation for addressing classical cybercrime, the autonomy of algorithms and the opacity of artificial intelligence systems render them insufficient in this new context. As identified throughout this study, responding to these challenges does not require abandoning the classical principles of criminal law; rather, it calls for their reinterpretation and extension along three interconnected strategic directions.

First, it is necessary to redefine responsibility through legislative measures that clearly establish the chain of liability for autonomous systems. In the absence of an "electronic legal personality," the law should introduce a presumption of vigilance for developers and operators, requiring them to bear criminal responsibility for negligence in the design or training of algorithms that generate foreseeable criminal consequences. This approach would help eliminate the zone of impunity created by the technical complexity of so-called "black box" systems.

Moreover, the modernisation of judicial cooperation instruments has become imperative. AI-enabled crime operates at a speed that far exceeds the capabilities of traditional mechanisms of mutual legal assistance. In this context, adopting an additional protocol to the Budapest Convention, specifically focused on artificial intelligence, would be essential. Such a protocol should ensure the immediate preservation of digital evidence and facilitate real-time information exchange between national authorities and AI service providers, regardless of jurisdiction.

Finally, the use of AI within the criminal justice system must be grounded in auditable transparency and subject to strict safeguards for fundamental rights. Any algorithm-based judicial or law enforcement decision should be accompanied by a clear explanation, ensuring a "right to explanation" and thereby safeguarding the right to defence and preventing systemic discrimination. Although the European Regulation on Artificial Intelligence (AI Act) represents a necessary first step, it must be closely aligned with na-

tional criminal codes in order to ensure the effective sanctioning of abuses.

Ultimately, adapting the legal architecture is not merely desirable but essential for preserving the rule of law in the digital age. In the absence of rapid legislative harmonisation at the European level and proactive international coordination, the criminal justice system risks becoming both reactive and ineffective, exposing society to asymmetric, automated, and difficult-to-attribute threats. The future of criminal law depends on the legislator's ability to anticipate technological developments, not merely to follow them.

Bibliographical references

1. King T.C., Aggarwal N., Taddeo M., Floridi L. *Artificial Intelligence Crime: An Interdisciplinary Analysis of Foreseeable Threats and Solutions*. In: "Science and Engineering Ethics", 2020, Vol.26, pp.89-120.
2. Završnik A. *Criminal Justice, Artificial Intelligence Systems, and Human Rights*. In: "ERA Forum", 2020, Vol.20, pp.567-583.
3. Završnik A. *Algorithmic justice: Algorithms and big data in criminal justice settings*. In: "European Journal of Criminology", 2021, Vol.18, No.5, pp.623-642.
4. European Commission. *Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)*. Brussels, 2021.
5. European Union Agency for Fundamental Rights. *Getting the Future Right – Artificial Intelligence and Fundamental Rights*. Luxembourg: Publications Office of the European Union, 2020.
6. Cath C., Wachter S., Mittelstadt B., Taddeo M., Floridi L. *Artificial Intelligence and the 'Good Society': the US, EU, and UK Approach*. In: "Science and Engineering Ethics", 2018, Vol.24, pp.505-528.
7. United Nations Office on Drugs and Crime (UNODC). Artificial Intelligence and Crime: Challenges and Opportunities. Vienna, 2021.
8. Europol. *Internet Organised Crime Threat Assessment (IOCTA) 2023*. The Hague, 2023.
9. Interpol. *Cybercrime and Emerging Technologies: A Global Perspective*. Lyon, 2023.
10. Susskind R. *Justice Artificial: The Future of Law in the Age of Algorithms*. Oxford: Oxford University Press, 2023.
11. Chesney R., Citron D.K. *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*. In: "Lawfare Research Paper Series", 2019, Vol.107, pp.1750–1810.
12. Regulation (EU) 2024/1689 of the European Parliament and of the Council laying down harmonised rules on artificial intelligence. In: Official Journal of the European Union, of 12.07.2024, L 2024/1689, pp.1-105.
13. Council of Europe. Convention on Cybercrime (Budapest Convention), CETS No.185, Budapest, of 23.11.2001.
14. Law No.286/2009 on the Romanian Criminal Code. In: Official Gazette of Romania, Part I, of 24.07.2009, No.510, as subsequently amended.

CZU 343.98:007 DOI: https://doi.org/10.5281/zenodo.20827896

THE APPLICABILITY OF ARTICLE 8 OF THE ECHR TO THE OFFENCE OF COMPUTER FRAUD: LIMITS OF DIGITAL INVESTIGATIONS AND REQUIREMENTS OF A FAIR TRIAL

Daniel CREȚU MARIO,
Specialist Officer,
"Alexandru Ioan Cuza" Police Academy, Bucharest, Romania
ORCID: 0009-0008-9591-2796

Sergiu CERNOMOREȚ,
PhD, Associate Professor,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Associate Professor, "Lower Danube" University of Galați,
ORCID: 0000-0003-0172-0491

Abstract

This article examines the relevance of the European Court of Human Rights' case-law to the investigation and punishment of computer-related fraud, with particular emphasis on the Convention limits applicable to digital surveillance and electronic evidence.

The paper starts from the premise that, although the Court does not adjudicate cybercrime offences as such and does not create an autonomous criminal policy model in this field, its case-law substantially shapes the European legal framework through the standards developed under Articles 8, 6 and 7 of the European Convention on Human Rights. From that perspective, the study argues that the Court's relevance in the field of computer-related fraud lies primarily in controlling the proportionality of state interference, protecting digital privacy, safeguarding adversarial proceedings and equality of arms in relation to digital evidence, and preserving the requirements of legal certainty and foreseeability in criminal law.

Keywords: computer-related fraud, cybercrime, digital evidence, privacy, fair trial, Budapest Convention, international cooperation.

INCIDENȚA ART. 8 DIN ChEDO CU PRIVIRE LA INFRACȚIUNEA DE FRAUDĂ INFORMATICĂ: LIMITELE INVESTIGAȚIEI DIGITALE ȘI EXIGENȚELE UNUI PROCES ECHITABIL

Abstract

Prezentul studiu analizează relevanța jurisprudenței Curții Europene a Drepturilor Omului pentru investigarea și sancționarea fraudei informatice, din perspectiva limitelor convenționale impuse utilizării tehnologiilor de supraveghere și administrării probelor digitale.

Lucrarea pornește de la premisa că, deși Curtea nu judecă direct infracțiuni informatice și nu configurează un model autonom de politică penală în materie, jurisprudența sa influențează decisiv cadrul juridic european prin standardele dezvoltate în aplicarea articolelor 8, 6 și 7 din Convenție. Din această perspectivă, cercetarea urmărește să evidențieze că relevanța CEDO în domeniul fraudei informatice constă mai ales în controlul proporționalității ingerințelor statului, în protecția vieții private digitale, în exigențele contradictorialității și egalității armelor în raport cu probele electronice, precum și în menținerea cerințelor de claritate și previzibilitate ale normei penale.

Cuvinte-cheie: fraudă informatică criminalitate informatică, probe digitale, viață private, proces echitabil, Convenția de la Budapesta, cooperare internațională.

Introduction. The rapid expansion of digital technologies has profoundly changed not only the way economic and social activities are carried out, but also the forms in which criminality manifests itself. In this new context, computer fraud has emerged as one of the most dynamic and difficult-to-control forms of crime, as it exploits both the technical vulnerabilities of information systems and the legal difficulties generated by the cross-border nature of the digital environment [1, pp. 1-2]. It is no longer merely a technological adaptation of classical fraud, but rather a type of unlawful conduct that simultaneously raises issues of jurisdiction, evidence, international cooperation and the protection of fundamental rights [34, pp. 148-149].

From a legal perspective, combating computer fraud cannot be reduced to the mere expansion of the state's repressive powers. On the contrary, the effectiveness of digital investigations depends on the ability of authorities to act within a normative framework that allows access to electronic evidence, the monitoring of certain communications or the use of computer data, without turning these instruments into a space of arbitrariness [4, pp. 25-26]. It is precisely at this point that the case-law of the European Court of Human Rights becomes relevant. Although the Court does not adjudicate cybercrime offences as such, it establishes the conventional standards against which the means used by states in investigating and sanctioning such acts must be assessed [28, pp. 2-3].

This the study aims to determine the extent to which ECtHR case-law influences the manner in which European states may investigate computer fraud without exceeding the limits imposed by the Convention. The hypothesis of the paper is that the relevance of the ECtHR in this field does not lie in the direct regulation of cybercrime, but in the configuration of a set of legal requirements concerning the protection of private life, the legality of interferences, the administration of digital evidence and the guarantees of a fair trial [27, p. 8]. In other words, the Court does not provide a criminal-law model of computer fraud, but rather a model for controlling state power in the context of digital investigations.

The analysis of the relevant case-law of the European Court of Human Rights, combined with the examination of the main European and international instruments in the field of cybercrime, forms the basis of the present research [28, p. 144].

From a methodological perspective, the study combines normative analysis with case-law analysis, while also taking into account a critical doctrinal perspective. Its objective is not to provide an exhaustive inventory of the forms of computer fraud, but to highlight the legal standards that condition the legitimacy of the state's response to this phenomenon.

Discussions and results obtained. I. Computer Fraud between Technological Specificity and Legal Vulnerability. Computer fraud differs from traditional forms of fraud through the nature of the environment in which it is committed, the instruments used and the particular manner in which the harmful result is produced. In the digital environment, obtaining an unlawful patrimonial advantage does not always require direct contact with the victim or the physical presence of the perpetrator in a specific place. Instead, it may result from the manipulation of information systems, deception through electronic means, the compromise of authentication data or the fraudulent use of payment and communication infrastructures [2, p. 79].

This form of criminality has a strongly adaptive character. Methods of operation evolve alongside technology, and the speed with which new digital tools emerge often makes the normative response of states slower than the dynamics of the acts under investigation [32, p. 127]. From this perspective, the fundamental challenge is not merely the

criminalisation of conduct, but the maintenance of a functional correspondence between the legal norm, technological reality and the requirements of the protection of fundamental rights.

Moreover, computer fraud almost always has a transnational dimension. The perpetrator may act from one jurisdiction, the technical infrastructure may be located in another, while the victims and evidence may be dispersed across several states. Such a structure complicates the determination of jurisdiction, access to data, cooperation between authorities and the use of electronic evidence [34, p. 144]. Consequently, the legal response to computer fraud cannot be conceived exclusively in terms of domestic criminal law, but requires an articulation between criminal law, criminal procedure, judicial cooperation and the European protection of human rights.

At the same time, the phenomenon produces a major economic and social impact. Patrimonial damage, the erosion of trust in digital infrastructures and the increase of risks to the security of electronic transactions transform computer fraud into a problem that goes beyond the strictly criminal sphere [31, p. 4]. For this reason, its prevention and repression require an integrated approach, in which repressive instruments are complemented by technical measures, international cooperation and digital education [41]. However, legitimate this objective may be, it cannot automatically justify the unlimited expansion of surveillance or data collection. In a state governed by the rule of law, the effectiveness of combating cybercrime must be assessed in relation to the conventional limits of state intervention [8].

In order to provide continuous education, training and information in the field of cybercrime, it is necessary to: develop and implement training programs dedicated to employees with investigative and criminal prosecution duties, prosecutors, judges and technical personnel [35, p. 510].

II. The European Legal Framework: Between Normative Harmonisation and Conventional Control. At European level, the fight against cybercrime is carried out through a multi-layered legal architecture. At its foundation lies the Budapest Convention on Cybercrime, which represented the first international instrument with a comprehensive scope in this field, by establishing common standards concerning both the criminalisation of offences and international cooperation, as well as the procedural powers necessary for their investigation [4]. The importance of the Convention lies not only in its harmonising function, but also in the fact that it expressly reflects the need to strike a balance between law-enforcement interests and respect for fundamental rights.

European Union law complements this framework through legal instruments concerning the security of networks and information systems, data protection, access to electronic evidence, and operational cooperation between Member States. Naturally, these instruments do not replace domestic law, but they create pressure towards normative and institutional convergence, especially with regard to responses to new forms of digital crime [6]. On the other hand, normative harmonisation does not eliminate the risk of imbalances between the repressive logic of criminal law enforcement and the requirements of human rights protection, thus highlighting the distinct role of the European Court of Human Rights.

The Court does not define cybercrimes and does not establish the constituent elements of computer fraud; its function is entirely different: to review whether, in the process of preventing, investigating and sanctioning such offences, states comply with the guarantees of the Convention [28, p. 3].

From this perspective, the case-law of the European Court of Human Rights be-

comes relevant not because it constructs a criminal law of cybercrime, but because it establishes the legality parameters of the state's response. The interception of communications, the monitoring of internet use, access to digital data, the storage of information concerning online activity, the use of technical surveillance measures and the use of electronic evidence all fall within an area in which Article 8 and Article 6 of the Convention acquire decisive importance [13]. In certain situations, Article 7 also becomes relevant, especially where technological developments risk creating tension with the requirements of clarity and foreseeability of criminal law provisions [25].

Therefore, the European legal framework in the field of computer fraud cannot be understood merely by listing the applicable legal instruments. It must also be analysed from the perspective of the conventional control exercised by the Court, which requires states to demonstrate that the effectiveness of digital investigations is not achieved through the unjustified sacrifice of individual freedoms [10].

III. CEDO Case-Law and the Standards Applicable to Digital Investigations. 3.1. Protection of Private Life and the Limits of Electronic Monitoring. A first perspective relevant to the investigation of computer fraud concerns the protection of private life and correspondence in the digital environment. In Copland v. the United Kingdom, the Court held that the monitoring of a person's electronic communications, including e-mail and internet use, falls within the scope of protection of Article 8 of the Convention. The importance of this judgment does not lie in its direct connection with computer fraud, but in the clarification of an essential principle: information generated through the use of communication technologies is not excluded from conventional protection merely because it is produced in a professional or digital environment [13].

This approach is particularly important in the field of investigations concerning computer fraud, since the gathering of evidence often involves access to communications data, online activity history or the content of electronic exchanges. In such situations, the Court requires that the interference be prescribed by law, pursue a legitimate aim and be necessary in a democratic society [26]. It follows that the technical effectiveness of monitoring is not sufficient; it must be accompanied and reinforced by a clear normative framework and by safeguards against arbitrariness.

The same logic can also be found in Bărbulescu v. Romania, in which the Court emphasised the obligation of national authorities to ensure a fair balance between the employer's legitimate interest and the employee's right to private life and correspondence. Although the case belongs to the field of labour law, its value goes beyond the strict framework of professional relationships. It highlights that the mere technical possibility of monitoring does not, in itself, justify the legitimacy of such interference. For the field of computer fraud, this conclusion is important because it shows that the monitoring of communications and digital behaviour must be subject to a rigorous proportionality review [7].

Consequently, the Court's case-law suggests that the protection of private life in the digital environment does not operate as an absolute obstacle to criminal investigations, but as a criterion for disciplining them. The state may use technical monitoring tools, but only insofar as the legal basis, the aim pursued and the procedural safeguards prevent the investigation from turning into excessive surveillance [10].

3.2. Legality and the Use of Digital Evidence. A second central and relevant idea concerns the legality of evidence and the relationship between irregularities in obtaining it and the requirements of a fair trial. In *Khan v. the United Kingdom*, the Court held that Article 6 does not, as a general rule, establish an autonomous system for the admissibility

of evidence, since this matter falls primarily within the scope of domestic law. The decisive issue is whether the proceedings, assessed as a whole, were fair [15].

This approach has important consequences for the use of digital evidence in computer fraud cases. In practice, electronic data may be obtained through methods that raise issues of legality, authenticity or reliability. However, an irregularity in the method by which evidence was obtained does not automatically lead to the conclusion that Article 6 has been violated. Rather, the Court examines whether the accused party was able to challenge the evidence, whether the court critically assessed its credibility and whether the proceedings as a whole provided sufficient safeguards [15].

In *Bykov v. Russia*, the Court emphasised the need for adequate safeguards against abuses in the use of covert methods of obtaining evidence [9]. The relevance of this case-law to the digital environment is clear. In the current context, technical instruments for data collection, recording, digital infiltration or access to information systems allows authorities a high degree of intrusion. In the absence of clear limits and effective control, such instruments may become incompatible with the requirements of the Convention [10].

Therefore, the issue of digital evidence is not limited to the question of whether such evidence is useful or effective. It also requires an assessment of the legality of the manner in which it was obtained, the conditions under which it may be challenged and the institutional safeguards accompanying its use in criminal proceedings.

3.3. The Right to a Fair Trial and the Adversarial Principle in the Digital Era. The right to a fair trial acquires a particular significance in the field of cybercrime, since digital evidence may be technical, opaque and difficult for the accused person to understand. In *Schenk v. Switzerland*, the Court held that the use of unlawfully obtained evidence does not automatically amount to a violation of Article 6, provided that the proceedings, viewed as a whole, remain fair [20]. This idea has been consistently reiterated in subsequent case-law and constitutes an important point of reference in the assessment of electronic evidence [15].

In relation to such evidence, the requirements of Article 6 imply more than the mere formal presence of the evidence in the case file. The accused person must have an effective opportunity to know, understand and challenge the digital material used against him or her. The adversarial principle and equality of arms become essential where the evidence is highly technical, produced by complex information systems or derived from technical operations that the party cannot easily verify [11].

This means that, in matters concerning computer fraud, the fairness of the proceedings depends not only on the formal legality of data collection, but also on the conditions under which such data are introduced, explained and challenged before the Court. The more technical and less immediately accessible the digital evidence is, the more important the role of the court becomes in ensuring the effective exercise of the rights of the defence [14].

3.4. Article 7 and the Requirement of Foreseeability of Criminal Law. Although studies on computer fraud usually focus on Article 8 and Article 6, Article 7 of the Convention is also relevant. The principle of legality of offences and penalties requires criminal law provisions to be sufficiently clear and foreseeable so as to enable individuals to understand the legal consequences of their conduct [17]. In the field of cybercrime, this requirement may become problematic precisely because of the accelerated pace of technological change [32, p. 4].

Computer fraud is an area in which new patterns of conduct often emerge before

legal terminology and legislative techniques have had time to adapt. In such a context, the temptation to use excessively broad formulations may increase. However, such an approach risks weakening the foreseeability of the law and undermining legal certainty. The relevance of Article 7 lies precisely in recalling that the modernisation of criminal law cannot be achieved by sacrificing the requirement of clarity [17].

From this perspective, the contribution of the European Court of Human Rights is indirect but essential: it warns that the need for legislative adaptation to new technological realities does not exempt the state from the obligation to formulate criminal law provisions compatible with the requirements of legality [27].

3.5. The Real Relevance of ECtHR Case-Law for Combating Computer Fraud. The Court's case-law does not provide an autonomous model of criminal policy in the field of computer fraud. It does not determine which investigative techniques are the most effective, nor does it define operational strategies for combating digital crime. Its relevance is, however, fundamental at another level: that of the legitimate limitation of state power and of conditioning the use of technological instruments on compliance with conventional guarantees [28].

In this respect, the impact of the European Convention on Human Rights on the fight against computer fraud is structural. The Court requires states to construct their investigative practices in a manner compatible with private life, the legality of interferences, adversarial proceedings, the rights of the defence and the foreseeability of the legal norm. This influence is all the more important as digital investigations tend to expand the state's capacity to collect, correlate and use large volumes of information [27].

Therefore, the Court's real contribution does not consist in reducing the effectiveness of the fight against cybercrime, but in preventing it from shifting towards a security model devoid of safeguards. In a democratic society, the effectiveness of repression cannot be achieved by suspending rights, but only by integrating them into the very logic of the criminal-law response [16].

IV. Current Problems and Challenges in Combating Computer Fraud. The fight against computer fraud currently faces a permanent tension between the rapid pace of technological transformation and the relative inertia of legal mechanisms. Offenders use encryption, anonymised infrastructures, advanced social engineering and, increasingly, tools based on artificial intelligence, which complicates the identification of perpetrators, the location of evidence and the documentation of offences [29, pp. 12-13]. Consequently, law-enforcement authorities are placed in a position where technical superiority no longer belongs exclusively to public authority.

Another major difficulty concerns access to electronic evidence. Relevant data may be dispersed across borders, held by private providers, encrypted or stored for limited periods of time. In this context, delays in international cooperation may decisively affect the effectiveness of the investigation [34, p. 47]. However, the operational pressure generated by these difficulties may encourage insufficiently regulated intrusive measures, which is why conventional control remains indispensable [10].

The problem of normative fragmentation also persists. Although harmonisation instruments exist, differences between national legislations, procedural standards and institutional practices continue to create a space of legal vulnerability that can be exploited by criminal networks [40, p. 147]. For this reason, international cooperation should not be understood merely as an instrument of assistance between authorities, but as a structural element of the effective fight against computer fraud [3, Art. 23].

The preventive dimension must not be ignored either. Insufficient digital literacy,

users' vulnerability to online manipulation techniques and excessive trust in platforms and electronic means facilitate the expansion of computer fraud [21, pp. 4-5]. In the absence of a minimum culture of digital security, criminal repression inevitably remains belated.

Under these circumstances, an effective legal response cannot be exclusively punitive. An integrated approach is necessary, combining legislative adaptation, the strengthening of international cooperation, the development of technical investigative capacities and the digital education of users. Only such a combination can realistically reduce the gap between the mobility of cybercrime and the state's capacity to respond within the limits of the rule of law [41].

Conclusions. The analysis carried out in this study highlights that computer fraud represents one of the most complex manifestations of contemporary crime, both through the technological specificity of its methods of commission and through the legal and procedural difficulties it generates. The adaptable nature of this phenomenon, its frequently transnational dimension and the central role of digital evidence mean that the state's response cannot be conceived exclusively in terms of classical criminal repression. Combating computer fraud necessarily requires a constant adjustment of the relationship between the effectiveness of investigations and respect for fundamental rights.

The study has shown that the relevance of the case-law of the European Court of Human Rights in this field does not lie in the direct regulation of computer fraud, but in the establishment of legal standards applicable to state intervention in the digital environment. From this perspective, the Court functions as an essential benchmark for assessing the legitimacy of surveillance measures, the use of electronic evidence and the manner in which authorities exercise their powers during criminal investigations. Its contribution is therefore one of delimitation and control, as it imposes clear limits regarding interferences with private life, the requirements of procedural fairness and the demands of legality.

An important finding of the research is that the protection of private life remains a central element even in the context of intensified digital investigative measures. The monitoring of communications, access to data and the use of modern technical means are not, in themselves, incompatible with the need to combat computer fraud, but they become legitimate only insofar as they are clearly regulated, proportionate to the aim pursued and subject to effective safeguards against arbitrariness. At the same time, the use of digital evidence requires increased attention from the perspective of the right to a fair trial, since its technical complexity may genuinely affect the accused person's ability to know, understand and challenge it.

The study also highlights that the rapid evolution of technology does not diminish the importance of the principle of legality, but rather reinforces its relevance. The adaptation of legislation to new forms of cybercrime is necessary, yet it cannot take place at the expense of the clarity and foreseeability of criminal law provisions. In the absence of sufficiently precise criminal offences and coherent procedural rules, the legal response risks becoming unstable and vulnerable from the perspective of fundamental rights protection.

At the same time, the transnational dimension of computer fraud confirms that the effectiveness of its prevention and repression depends essentially on international cooperation. However, the need for speed and efficiency in exchanging data and obtaining evidence cannot justify the circumvention of legal safeguards. On the contrary, it is precisely in the context of cross-border cooperation that maintaining a balance between the repressive interest and the protection of individual freedoms becomes essential.

Ultimately, computer fraud requires a model of legal response based on the complementarity between effectiveness and safeguards. The case-law of the European Court of Human Rights provides the necessary benchmarks for constructing this balance, demonstrating that the protection of fundamental rights is not an obstacle to combating cybercrime, but a condition of its legitimacy. Only through the coherent integration of these standards into legislation, judicial practice and the activity of criminal investigation authorities can an effective, proportionate response compatible with the requirements of the rule of law be built.

Bibliographical references

1. Clough Jonathan. A *World of Difference*: *The Budapest Convention on Cybercrime and the Challenges of Harmonisation*. In: Monash University Law Review, Vol. 40, No.3, 2014, pp.1-2; 20.
2. Clough Jonathan. Principles of Cybercrime. Cambridge University Press, 2nd ed., 2015, pp.7-10; 78-80.
3. Council of Europe, Convention on Cybercrime, Budapest, 23.XI.2001, Preambul; Art. 1, Art. 2-8, Art. 23-35.
4. Council of Europe, Explanatory Report to the Convention on Cybercrime. Budapest, 23.11.2001, pct. 16-20; 22-23; 33-39; 44-50; 71-80; 145-148; 243-256.
5. Council of Europe, Explanatory Report to the Second Additional Protocol to the Convention on Cybercrime, 2021, pct. 7-10, pp. 2-3.
6. Directive (EU) 2022/2555 — NIS2 Directive, OJ L 333, 27.12.2022, pp. 80-152.
7. ECtHR [GC], Bărbulescu v. Romania, No.61496/08, 5 September 2017, §§ 70-73; 120-122; 133-134.
8. ECtHR [GC], Big Brother Watch and Others v. the United Kingdom, Nos.58170/13, 62322/14 and 24960/15, of 25.05.2021, §§ 322-330; 332-347; 350; 425.
9. ECtHR [GC], Bykov v. Russia, no. 4378/02, 10 March 2009, §§ 78–83; 89–90.
10. ECtHR [GC], Roman Zakharov v. Russia, No.47143/06, of 04.12.2015, §§ 227-234.
11. ECtHR [GC], Rowe and Davis v. the United Kingdom, No.28901/95, of 16.02.2000, § 60.
12. ECtHR, Cantoni v. France, No.17862/91, of 15.11.1996, § 29.
13. ECtHR, Copland v. the United Kingdom, No.62617/00, of 03.03.2007, §§ 41-44.
14. ECtHR, Doorson v. the Netherlands, No.20524/92, 26 March 1996, § 72.
15. ECtHR, Khan v. the United Kingdom, No.35394/97, 12 May 2000, §§ 34-37.
16. ECtHR, Klass and Others v. Germany, No.5029/71, 6 September 1978, §§ 48-50.
17. ECtHR, Kokkinakis v. Greece, No.14307/88, 25 May 1993, § 52.
18. ECtHR, Mirilashvili v. Russia, No.6293/04, 11 December 2008, §§ 200-208.
19. ECtHR, S. and Marper v. the United Kingdom, Nos. 30562/04 and 30566/04, 4 December 2008, § 101.
20. ECtHR, Schenk v. Switzerland, No.10862/84, 12 July 1988, § 46.
21. ENISA, Awareness and Cyber Hygiene, European Union Agency for Cybersecurity, Online source, n.p.
22. ENISA, ENISA Threat Landscape 2024, European Union Agency for Cybersecurity, 2024, pp.7-8; 15-16; 18-19.
23. EuroMed Justice, Digital Evidence Manual, 2019, pp.15-16.
24. European Court of Human Rights Knowledge Sharing, Guide on Article 7 of the Convention – No Punishment without Law, 2023/2024, pp.6-8.
25. European Court of Human Rights Knowledge Sharing, Note on Unlawfully Obtained Evidence, 2023/2024, pp.1-2.

26. European Court of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 6; Art. 7; Art. 8; Art. 8 § 2; Art. 46.
27. European Court of Human Rights, Guide on Article 8 of the Convention – Right to respect for private and family life, home and correspondence, 2021/2023, pp.8-10.
28. European Court of Human Rights, The ECHR in 50 Questions, 2024, p.7.
29. Europol, Internet Organised Crime Threat Assessment (IOCTA) 2024, Publications Office of the European Union, 2024, pp.12-13; 22-23.
30. Europol, Online Fraud Schemes: A Web of Deceit, Publications Office of the European Union, 2023, pp.4-5.
31. FBI Internet Crime Complaint Center, 2025 IC3 Annual Report, 2026, pp.3-4.
32. Gercke Marco. Understanding Cybercrime: Phenomena, Challenges and Legal Response, International Telecommunication Union, Geneva, 2012, pp.73-75; 123-127; 126-127.
33. INTERPOL, Africa Cyberthreat Assessment Report 2025, 2025, p. 9.
34. Kleijssen Jan, Pierluigi Perri. *Cybercrime, Evidence and Territoriality: Issues and Options*. In: Netherlands Yearbook of International Law 2016, vol. 47, 2017, pp.144-149.
35. Nastas A., Chernomoreț S. *Criminology: Treatise*. Bucharest: Pro Universitaria, 2023, ISBN 978-606-26-1562-8, 686 p.
36. Regulation (EU) 2016/679 — General Data Protection Regulation, OJ L 119, 4.5.2016, pp.1-88.
37. Regulation (EU) 2016/794 on Europol, OJ L 135, 24.5.2016, pp.53-114.
38. Regulation (EU) 2023/1543 on European Production Orders and European Preservation Orders for Electronic Evidence, OJ L 191, of 28.07.2023, pp.118-180.
39. Stoykova Rositsa. *The Right to a Fair Trial as a Conceptual Framework for Digital Evidence*. In: Computer Law & Security Review, 2023, pp.4-7.
40. UNODC, Cybercrime Module 1 – Key Issues: Cybercrime Trends, Section: "Legal Challenges", Online source.
41. UNODC, Cybercrime, Section: "UNODC response".

CZU 341.215.4 **DOI: https://doi.org/10.5281/zenodo.20827980**

ABOUT THE EFFECTS OF THE RETURN DECISION

Anișoara BĂBĂLĂU,
PhD, Associate Professor,
Faculty of Law,
University of Craiova, Romania
ORCID: 0009-0003-7614-4799

Andra Maria BREZNICEANU,
PhD, University Lecturer,
Faculty of Law,
University of Craiova, Romania
ORCID: 0009-0000-7148-9497

Abstract

In this article, we will examine the more or less noticeable effects of the return decision, as regulated by Emergency Ordinance No.194/2002 on the status of foreigners in Romania (hereinafter – E.O. 194/2002).

The decision to return foreigners must be subject to rigorous legal scrutiny to ensure unequivocal respect for their fundamental rights. The practice of Romanian authorities is often characterized by a formalistic and expedited approach, frequently indicating a lack of concern for the safeguards provided by European and international law regarding the protection of persons in vulnerable situations. The disregard for the principle of proportionality, the lack of effective remedies, and the arbitrary application of measures that relate more to the operational activities of institutions than to administrative acts reflect a chronic failure to align legislation and administrative practices with the standards set by the Court of Justice of the European Union and the European Court of Human Rights.

In this context, an urgent review of the regulatory and procedural framework is required so that the Romanian state can truly fulfill its international obligations and respect human dignity.

Keywords: return, decision, effects, migration, illegal, fundamental rights.

DESPRE EFECTELE DECIZIEI DE RETURNARE

Abstract

În conținutul articolului, vom analiza efectele mai mult sau mai puțin sesizabile ale deciziei de returnare, reglementată prin Ordonanța de urgență nr. 194/2002 privind regimul străinilor în România (în continuare OUG 194/2002).

Decizia de returnare a străinilor trebuie să fie supusă unui control juridic riguros, care să asigure respectarea neechivocă a drepturilor fundamentale ale acestora. Practica autorităților române se caracterizată adesea printr-o abordare formalistă și expeditivă, denotă adesea o preocupare precară pentru garanțiile oferite de dreptul european și internațional în materie de protecție a persoanelor aflate în situație de vulnerabilitate. Ignorarea principiului proporționalității, lipsa unor căi de atac efective și aplicarea arbitrară a măsurilor ce țin mai mult de activitatea operativă a instituțiilor decât de actul administrativ reflectă un deficit cronic în alinierea legislației și a practicilor administrative la standardele impuse de Curtea de Justiție a Uniunii Europene și de Curtea Europeană a Drepturilor Omului.

În acest context, se impune o reconsiderare urgentă a cadrului normativ și procedural, astfel încât statul român să își asume cu adevărat obligațiile internaționale și respectarea demnității umane.

Cuvinte-cheie: returnare, decizie, efecte, migrație, ilegal, drepturi fundamentale.

Introduction. In this article, we aim to provide some clarification regarding the more or less noticeable effects of the administrative act known as a return decision, as provided for in Emergency Ordinance No.194/2002 on the status of foreigners in Romania (hereinafter – E.O. 194/2002).

Methods and materials applied. The present article is based on the provisions of the following legislative acts and relevant legal instruments: Government Emergency Ordinance No.194 of December 12, 2002, on the Status of Foreigners in Romania; Government Ordinance No.44 of January 29, 2004, on the social integration of foreigners who have been granted international protection or a right of residence in Romania, as well as of citizens of Member States of the European Union and the European Economic Area; Law No.122 of May 4, 2006, on asylum in Romania; Government Ordinance No.25 of August 26, 2014, on the employment and posting of foreigners within the territory of Romania and amending and supplementing certain legislative acts regarding the status of foreigners in Romania; European case law.

Discussions and results obtained. The return decision is the administrative act issued by the General Inspectorate for Immigration, through which it is officially established that a foreign national's stay on the territory of the state is illegal, and following this determination, the foreign national is imperatively required to leave the national territory within a set timeframe, under penalty of the application of appropriate coercive measures, in accordance with applicable national and international legal regulations. This constitutes a measure to regulate migration flows, aimed at ensuring compliance with the rules governing residence on the territory of the state, and is issued following an assessment of the circumstances of the foreign national's stay (by the same authorities) and in accordance with the legal procedures in force.

The administrative act cannot be separated from the operation itself. Return is the process by which a foreign national is returned, either voluntarily or under escort, to a third country, which may be, as the case may be, the country of origin, a transit country designated under international agreements to which Romania or the European Union is a party, or any other third country to which the person concerned chooses to return, provided that the country in question agrees to accept the individual. This process is carried out in accordance with the principles of protecting the fundamental rights of the individual, ensuring that the foreign national's return is conducted in a dignified and respectful manner, taking into account their personal circumstances, as well as international standards regarding the protection of human rights. Return may be accompanied by assistance measures, including counseling or financial support, to facilitate the foreign national's reintegration in the destination country, in accordance with the principles of humanity and international law.

A return decision is an administrative act of particular importance, by which the termination of a foreign national's right of residence in Romania is established, following the identification of circumstances that contravene applicable legal and international regulations. The grounds for such a measure are varied and include, among other things, situations in which the foreign national did not meet the legal requirements at the time of entry into the country, used false documents or provided incorrect information, facilitated the illegal entry of other persons, violated customs regulations or attempted to cross the borders illegally, or entered Romania during a pre-existing ban. Furthermore, violating the stated purpose of entry or regulations regarding the employment of foreigners, as well as the imposition of a measure prohibiting subsequent entry or a declaration of undesirability, constitute sufficient grounds for issuing such a decision. Specifically, through

the return decision, the competent authorities establish the foreign national's obligation to leave Romanian territory, formally and transparently communicating to them the legal basis for the measure ordered, in order to ensure respect for the individual's fundamental rights, as well as public security and order (although, as we will show below, the latter take precedence over the former).

The decision to annul or revoke the right of residence is an administrative act that terminates a foreign national's right to remain in the country, in accordance with applicable legal regulations. In this regard, this measure is communicated in a fair and transparent manner by the General Inspectorate for Immigration through a return decision, an official document by which the competent authorities notify the foreign national present on Romanian territory of the termination of their right of residence. It is essential to emphasize that, through this return decision, the foreign national is informed not only of the revocation of their permission to remain on the territory of the state, but also of the obligation to leave the country, thereby establishing the procedural framework necessary to ensure the fair respect of their rights. This procedure must be conducted in accordance with the principles of legality, transparency, and proportionality, ensuring that the foreign national is fully aware of the reasons underlying this measure and has the opportunity to challenge the decision before the competent authorities, in accordance with their right to a fair hearing and with international standards protecting fundamental human rights.

Article 81 of Government Emergency Ordinance No.194/2002 establishes the framework under which the General Inspectorate for Immigration may order the return of a foreign national who is residing illegally in Romania by issuing a clear administrative decision, in accordance with applicable national and international regulations. Thus, return may be ordered in various cases, including illegal entry into Romanian territory, failure to comply with legal conditions for entry and stay, expiration of residence documents, or in situations where the foreign national has been declared undesirable or where the temporary protection granted by a decision of the Council of the European Union has ceased. It is essential to emphasize that in applying this measure, the authorities must strictly adhere to the principle of proportionality [1], ensuring that the return measure is not more severe than necessary, taking into account the specific circumstances of each individual case. Additionally, further protection is provided to foreign nationals who are subject to procedures for taking charge by another European Union member state or to procedures for extending their right of residence, as it is possible to postpone the issuance of the return decision until the completion of such procedures. In all cases, the foreign national must be properly informed of their rights and options, and the measures ordered must be fair and in accordance with international standards regarding the protection of fundamental rights.

Article 82 of Government Emergency Ordinance No.194/2022 establishes a fundamental prohibition on the measure of return, based on the essential principle of protecting the rights of the individual—particularly those of foreign nationals—through the application of the principle of proportionality [2], which requires a careful and balanced assessment of the circumstances of each case [3]. In this regard, the legislature has provided for a series of situations in which return cannot be ordered, even in the context of an illegal stay, reflecting a constant concern for the observance of fundamental human rights principles. Thus, the return measure is prohibited when the foreign national is a minor and has a parent with a right of residence in Romania, or when he or she is the parent of a minor Romanian citizen who is dependent on him or her, which reflects the paramount protection of family unity and the child's right to remain with his or her par-

ent. Furthermore, the prohibition on return applies to a foreign national married to a Romanian citizen or to a foreign national with a long-term right of residence, highlighting the importance of maintaining a stable and legal family relationship within the national territory. Similarly, protection is extended to foreigners over the age of 65, recognizing the need for humane treatment and protection of the vulnerable, in accordance with the principles of humanity.

Furthermore, in cases where one of these circumstances favorable to the foreign national arises after the return order has already been issued, but before its enforcement, the competent authorities, namely the General Inspectorate for Immigration, are required to revoke the return decision, thereby ensuring that individual rights are adequately protected, without resorting to the application of a disproportionate or unfair measure. These regulations therefore guarantee a fair and favorable framework for the foreign national, and the procedure must not be an unjustified coercive mechanism, but one that takes into account the personal circumstances of each person involved.

In this context, exceptions are made, for example, in cases where the foreign national poses a threat to public order, national security, or public health, or where the foreign national refuses to comply with measures imposed by medical authorities; however, these situations are exceptional and must not serve as a pretext for the arbitrary application of the return measure.

In conclusion, the prohibition on return is an essential safeguard for foreigners in vulnerable situations, ensuring that any administrative measure, including the return decision, complies with the principle of proportionality, which requires that the authorities' interventions be appropriately calibrated, respect the individual's fundamental rights, and be reviewed primarily at the administrative level, but also at the judicial level, thereby protecting the balance between public order and respect for human rights. Return, in its legal-administrative sense, constitutes a measure of last resort, a solution that may be ordered only in circumstances of indisputable gravity and only after all alternative mechanisms—whether preventive, corrective, or integrative—have been exhausted. In accordance with the principles of legality, proportionality, and necessity, any return procedure must be subject to a thorough and rigorous analysis, grounded in both the principle of good administration and the imperatives of protecting fundamental rights. Any decision in this regard must be the result of a thorough assessment, in which both the impossibility of any other reasonable solution and the imperative nature of the measure are demonstrated completely and transparently, without omission, and in an indisputable manner.

In a comprehensive and transparent manner, without omission, and beyond any doubt, both the impossibility of any other reasonable solution and the imperative nature of the measure. In light of the requirements imposed by the legal and administrative order, return may only be implemented as an exceptional measure, justified by circumstances of absolute urgency, in accordance with applicable legal norms and under the strict supervision of the competent authorities.

Article 83 of Government Emergency Ordinance 194/2022 apparently regulates in detail and rigorously the procedural framework of the return decision, emphasizing both the importance of transparency and the need to comply with the highest standards of formality and legality, which are essential for protecting the fundamental rights of the foreign national. The return decision, in essence, constitutes an administrative act through which the General Inspectorate for Immigration confirms the foreign national's illegal stay on Romanian territory and establishes their obligation to return, including the deadline for voluntary departure. In this context, the authorities are required to draft

the decision in a complete, accurate, and detailed manner [4], so as to reflect the exact reasons that led to the finding of illegal residence, as well as the method of implementing the return measure, thereby complying with the mandatory principle of transparency and access to justice through this content.

In this context, the return decision must be drawn up in two copies—one in Romanian and the other in a language of international circulation—thus ensuring effective and accessible communication that guarantees the foreign national a clear understanding of the measure applied and the reasoning behind it. This formality is not merely a procedural obligation but also a demonstration of respect for the fundamental rights of the individual concerned, while simultaneously facilitating access to the legal remedies provided by law. Thus, the authorities are required to provide complete and accurate information, including the factual and legal details underlying the decision, as well as all necessary information regarding the courts competent to adjudicate on the return decision and the available remedies, all of which contribute to creating a fair and transparent legal framework. In this regard, the competent authorities have a positive obligation to provide the data subject with a detailed, complete, and unambiguous statement of the factual and legal grounds underlying the measure ordered, avoiding any omission that could affect the right to a defense.

Furthermore, in our view, the decision must clearly and comprehensibly set forth all information regarding the courts competent to review the legality of the measure, the available remedies, and the applicable time limits, so that the addressee may effectively exercise their right to an effective remedy. In practice, these requirements are not always properly met, which creates significant risks of procedural irregularities. In a state governed by the rule of law, courts must be able to exercise effective and thorough review of the legality of the administrative decision, with the ability to critically examine and fully assess the arguments of the issuing authority. The omission of essential elements from the return decision may limit the courts' ability to exercise genuine judicial review, thereby undermining the fairness of the proceedings. It is therefore imperative that the authorities fulfill their obligation to ensure a clear legal framework by providing all necessary information in a comprehensive and accessible manner, so that the procedural rights of the individuals concerned are fully respected and the courts have all the necessary elements to conduct a rigorous and effective judicial review.

Furthermore, to ensure effective protection of the foreign national's rights, if he or she does not understand Romanian or a language of international circulation, the authorities are required to provide an appropriate translation of the main elements of the return decision, ensuring that the foreign national is fully informed of the measure applied to them and of the possibility to challenge this decision.

It is important to note that this detailed procedural framework, which includes written or oral translation, does not apply directly only to foreigners who have crossed the border of Romania or another European Union member state illegally. In such cases, the authorities are required to provide the foreign nationals with an explanatory sheet in several internationally used languages.

Thus, the decision-making process regarding return must be conducted with a high level of legality, transparency, and formality, which clearly guarantees the foreign national's procedural rights and protects the principle of proportionality. In this way, the authorities allow the courts, if necessary, to review and validate, through judicial proceedings, the arguments and reasoning underlying the return measure, thereby contributing to a just and equitable system of law enforcement.

Article 831 of Government Emergency Ordinance No.194/2022, which regulates the technical measures applied to foreigners subject to return decisions, completely alters the direction of the legal framework governing return operations and raises deep skepticism regarding the authorities' genuine commitment to truly respect the fundamental rights of the persons affected by these measures. We consider that this legal provision is likely to create the risk of exceeding the legal limits established to protect human rights. This provision suggests an approach that appears to aim more at consolidating a system of control, with potentially serious future consequences, where the foreign national is categorized, and their personal data—including fingerprints and photographs—can be turned into a tool for perpetuating constant surveillance, with the risk of abuses that may exceed the limits of a reasonable application of the law.

It can be truly problematic that such technical measures are implemented without offering any real guarantee that the personal data of foreigners will not be used in a way that compromises their rights, sometimes without any clear or proportionate justification, especially when the individual is subject to return. In fact, rather than being an act aimed at protecting the individual, fingerprinting and photographing them under the Schengen Information System (SIS) appears to be a bureaucratic labeling exercise, intended not only to ensure their return but also to create a "digital footprint" that will remain stored forever, paving the way for the use of this information for purposes that are, in most cases, impossible to anticipate.

In light of these regulations, a highly pertinent question arises: what, in reality, constitutes proportionality when a foreign national becomes the subject of an international database that could potentially be used against them in an uncertain future? Can such an action by the authorities be considered "proportionate" when it is applied without a genuine review of all circumstances and without the authorities being required to truly explain the rationale behind this operation? It can therefore be argued that the process undermines the principles of proportionality [5] and fairness [6], raising questions about the actual effectiveness of the measures in relation to their long-term impact on the rights and freedoms of foreigners.

In the context of the regulations set forth in Article 83[1], since the two procedures for registering the foreign national are not clearly defined as individual administrative acts that can be separately challenged in court, it is nearly impossible not to note the absence of clear and effective procedural safeguards before the authorities to protect the fundamental rights of the foreign national subject to the return measure, not only before the administration, but also, and crucially, before the courts.

In fact, even at the administrative level, there is no real transparency regarding the reasons given for fingerprinting and photographing foreign nationals, and the authorities tactfully avoid providing clear explanations as to how this data will be used in the future. In any case, in the face of such a regulatory act, not even a court of law seems truly capable of protecting the individual's rights, given that the procedural mechanisms intended to safeguard the foreign national's interests are ambiguous.

Fingerprinting and photographing, as technical measures ordered by the competent authorities, do not constitute administrative acts in the strict sense of the term [7], but rather represent preparatory acts necessary for subsequent proceedings. This legal classification has significant consequences for the possibility of challenging these measures before the administrative court. According to the general principles of administrative law, an act is subject to judicial review if it produces direct legal effects on a person's rights and freedoms. However, fingerprinting and photographing measures do not, in and of

themselves, have an autonomous decision-making character, but rather constitute mere technical and material operations that prepare the way for the adoption of subsequent administrative acts.

From this perspective, case law tends to exclude them from the scope of administrative acts proper, which makes it impossible to challenge them directly before the administrative court. This situation creates a genuine gap in access to justice, as the person affected by these measures has no effective remedy to challenge them before they produce further legal effects, which contravenes the fundamental right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights. In the absence of a judicial remedy, the risk of unjustified interference with the individual's fundamental rights becomes evident, and effective judicial protection is seriously undermined.

The legal regime applicable to fingerprinting and photographing measures requires a reassessment from the perspective of necessary procedural safeguards, so that any person subject to these measures may benefit from real and effective access to justice, in accordance with international standards on the protection of human rights. In such a situation, the fundamental rights of the foreign national could be violated, without any means of seeking an objective review of the measures applied.

Thus, in addition to the fact that the system is built around the idea that a foreign national has little chance of challenging such a measure, he or she effectively becomes a cog in an administrative machine where their fundamental rights may remain without any real protection, even in the courts. Thus, it is evident that, although in theory there are regulations that should guarantee respect for the foreign national's rights, in reality, these prove to be merely a formality that can derail the return process.

It should be noted that neither Regulation (Eu) 2018/1860 of the European Parliament And of the Council of 28 November 2018 on the Use of the Schengen Information System for the Return of Illegally Staying Third-Country Nationals Nor Regulation (Eu) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation, and use of the Schengen Information System (SIS) in the field of border checks, amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No. 1987/2006, contain provisions allowing for the separate challenge of these two technical operations in administrative litigation.

In conclusion, the technical measures imposed by European regulations should be viewed with a great deal of skepticism, given the potential risks of abuse and misuse of personal data—risks that could seriously affect the rights of foreigners—without the authorities being sufficiently transparent or accountable in addressing these concerns.

Article 84 of Government Emergency Ordinance 194/2022 is a product of administrative formalism. Viewing this text with legal detachment, we are faced with a classic example of how to create a procedure that appears fair at first glance but which, in practice, may function as a mechanism to obstruct fundamental rights. The "notification" of the return decision is issued by the General Inspectorate for Immigration, which delivers a copy of the decision to the foreign national. It is strictly stipulated that the decision may be delivered either by hand, against signature (an ideal scenario, which assumes that the foreign national and the official will meet at exactly the right time), or by mail, with a return receipt, which, in theory, seems reasonable. But in reality? The precarious living conditions of foreigners, the bureaucratic difficulties in updating an address, and, above all, the fact that a person subject to return may be in an extremely vulnerable situation, without constant access to mail, are completely ignored. In the case of "notification" by posting, the authority's effort appears to be minimal, as it is highly likely that the recipi-

ents are not even aware of its existence. The final means of publicizing the return decision, if service fails (which, unsurprisingly, happens often), is that the decision is "communicated" by posting at the headquarters of the General Inspectorate for Immigration. Thus, in the spirit of procedural absurdity, the foreign national in question is presumed to have the daily habit of voluntarily checking the bulletin boards of the very institution that has just ordered their removal. This method, which reduces the act of notification to a mere formality, constitutes an administrative avoidance of actual contact with the affected person, thereby ensuring that procedural rights remain a mere theoretical ideal. All these tactics stem from the absolute presumption of inaccessibility—the foreign national cannot be held responsible for failing to receive a document of which they are unaware. The legislature introduces a list of situations in which service is presumed to be impossible, but these constitute a series of procedural pitfalls for the foreign national: if the foreign national refuses to accept the document, if the foreign national no longer resides at the declared address, or if the foreign national has not declared an address.

In conclusion, this is a highly sophisticated administrative mechanism that can block a foreign national's access to the courts. The provisions of this article do not, in reality, regulate a notification procedure, but rather an administrative mechanism for effectively avoiding actual notification. The foreign national is placed in a procedural maze where they are required to comply with rules they cannot know or follow and are sometimes accused of non-cooperation. Through a combination of rigid formalism and legal fiction, the state manages to transform the communication of a decision into a purely symbolic act, thereby emptying of content the procedural safeguards that should protect the person concerned.

Moving on to Article 88 of Government Emergency Ordinance 194/2022 regarding "voluntary" departure, it can be observed that, if we were to refer strictly to the title of this article, it appears we are dealing with a genuine expression of the foreign national's will before the Romanian administrative apparatus. Thus, the foreign national is offered the "opportunity" to "voluntarily" comply with the obligation to return. The deadlines for voluntary departure, however, are merely the bureaucratic timing of the expulsion, and we consider them insufficient. Article 88(2) and (3) precisely outline the period that the authorities are willing to grant a foreign national to get their affairs in order.

The distinction between 15 days and 30 days, although it appears to reflect some differentiation in factual circumstances, is in fact a superficial concession calculated strictly on the basis of how "guilty" the foreign national is for their own situation of illegality. Thus, those who have been "detected" without a right of residence are granted a 15-day period, whereas those who had a somewhat legal relationship with the state—but whose right of residence was annulled, revoked, or denied—receive 30 days, a grace period that is supposed to be sufficient to put their lives, belongings, housing, employment, and, possibly, their family in order.

Through voluntary departure, the foreign national is offered the choice between leaving Romania with a modicum of dignity (but within a timeframe strictly dictated by the authorities) and being removed under escort. However, this "voluntary" departure is not a real option, but merely a less brutal procedural version of an administrative expulsion that has already been decided.

An examination of Article 96 of Government Emergency Ordinance 194/2022 regarding the suspension of the enforcement of the return obligation reveals a reality quite different from the one presented—we are dealing with enhanced protection of the foreign national's rights, which underscores respect for the individual and compliance with in-

ternational norms. According to Article 96(1), the Romanian state suspends the enforcement of the decision only in situations where the return decision is in direct conflict with fundamental norms of international law or with norms of humanitarian law. For example, return is temporarily halted if the foreign national risks being sent to a state where they could be tortured or subjected to inhuman treatment (subparagraph a)).

Another situation in which the authorities decide to suspend the return process is the foreign national's state of health (subparagraph b)). In other words, Romania does not deport individuals whose medical condition makes return "impossible". Furthermore, the regulation provides that return is suspended if the foreign national is the parent of a minor enrolled in school (lit. c)), but only for the duration of the school year. This provision raises the following dilemma: once the school year ends, is it perfectly acceptable for the minor to be separated from his or her parent?

Article 96(2) reminds us that any suspension of the obligation to return is only temporary. According to paragraph (3), once it is determined that the circumstances justifying the suspension have ceased to exist, the foreign national is placed back on the path to expulsion, without benefiting from an individualized reassessment of their situation. Of course, in a gesture of administrative transparency, the authorities are required to inform the foreign national, "in writing" of the termination of the suspension (para. 4), which brings the foreign national back to the issue of "notification" of the return decision. The suspension of return is permitted only under extremely restrictive conditions and only for the duration of temporary circumstances. There is no guarantee that, once these circumstances cease, the foreign national's situation will be reassessed in good faith or that the authorities will take into account any new circumstances that may arise. Thus, this article must ensure that it reflects a genuine intention to protect the individual's interests. Ultimately, expulsion must respect the principle of proportionality of the measure.

Article 97 of Government Emergency Ordinance 194/2022 outlines the rules and safeguards applicable during the suspension of the obligation to return. Thus, what is presented as a generous list of safeguards is closer to minimum legal obligations. The so-called preservation of family unity (lit. a)) is a statement of principle that appears to indicate that the Romanian state does not carry out deportations in the manner of undemocratic regimes, where families are torn apart without hesitation.

In the case of providing emergency medical care and basic treatment for illness (lit. b)), the emphasis on the term "emergency" speaks volumes. In practice, the Romanian state declares that foreigners awaiting return will receive this benefit, but unfortunately, any other type of medical care that goes beyond the strictly necessary "basic treatment of the illness" [8] is not taken into account (e.g., complex treatments, chronic medication, post-operative rehabilitation, etc.). A phrase so vague that it can be interpreted as a way to restrict access to medical services.

Granting minors access to the education system (lit. c)) is a provision that, at first glance, seems reasonable, but which hides a difficult question: what happens after return? Is the minor's educational continuity guaranteed, or does this right disappear the moment the parent is deported? Taking into account the special needs of vulnerable persons (lit. d)) is another way of ensuring that the rights of foreigners are respected during the suspension of the obligation to return. What exactly does "taking into account" these needs mean? Are there actual support mechanisms in place at the level of the competent authorities? Without a clear definition of the applicable protective measures, this principle could remain an empty rhetorical exercise, intended only to give the illusion of genuine concern.

Thus, what is presented as a set of rights is, in reality, a list of strictly limited administrative concessions. The foreign national is temporarily protected and tolerated, and these "guarantees" are intended to provide them with a dignified life and ensure that the return process does not become too brutal.

Conclusions. In light of the above considerations, the decision to return foreigners must be subject to rigorous judicial review to ensure unequivocal respect for their fundamental rights. The practice of Romanian authorities, often characterized by a formalistic and expedited approach, must not reflect a lack of concern for the safeguards provided by European and international law regarding the protection of persons in vulnerable situations. The legislative possibility of disregarding the principle of proportionality, the lack of effective remedies, and the potential for arbitrary application of measures constitute a shortcoming in aligning legislation and administrative practices with the standards set by the Court of Justice of the European Union and the European Court of Human Rights. In this context, a reconsideration of the regulatory and procedural framework is necessary so that the Romanian state can ensure respect for the rights of foreigners, in accordance with the requirements of international obligations, prioritizing human dignity over administrative urgency.

Bibliographic references

1. Judgment in the case of *Lupșa v. Romania* (Application No.10337/04) of the European Court of Human Rights (ECHR), para. 30, – "Finally, the Government asserts that the contested measure pursued a legitimate aim, namely the protection of national security, that it was necessary in a democratic society since it is justified by a pressing social need, and that it was proportionate to the legitimate aim pursued. To conclude on the proportionality of the interference, the Government emphasizes that account must be taken, on the one hand, of the seriousness of the acts of which the applicant was suspected and, on the other hand, of the fact that his partner and their child are free to visit him and, if necessary, to settle in Serbia and Montenegro". Available: https://hudoc.echr.coe.int/eng?i=001-75688.
2. Judgment of the CJEU in Case C-146/14 PPU, para. 55 – "As is apparent from recitals (13), (16), (17), and (24) of Directive 2008/115, any order for a measure of detention falling within the scope of that directive is strictly governed by the provisions of Chapter IV of that directive so as to ensure, on the one hand, compliance with the principle of proportionality as regards the means employed and the objectives pursued and, on the other hand, respect for the fundamental rights of the third-country nationals concerned". Available: https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:62014CJ0146.
3. Decision No.588/2017 – a case concerning the status of foreigners heard by the High Court of Cassation and Justice – Administrative and Fiscal Litigation Division, specifically the grounds cited below – "Specifically, the court held that the re-examination of the claimant's situation regarding the conditions for entry into Romania does not fall within the jurisdiction of B., but rather within that of C., but upheld the res judicata effect regarding the prohibition ordered by B. The decision rendered by the Court of Appeal on the objection regarding the lack of passive legal standing of the defendant B. is erroneous, as B. is the issuer of the contested administrative act in this case. Regarding the plea of res judicata, in the present case the threefold identity of parties, subject matter, and cause of action is not satisfied. The parties in Case No.x/2/2008 were the same, but the subject matter of that case was the annulment of the decision to return

from Romanian territory, based on Article 82 of Government Emergency Ordinance No.194/2002". Available: https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=139159#highlight=##.
4. Charter of Fundamental Rights of the European Union, Art. 41(1) and (2)(c) – "Right to good administration (1) Every person has the right to have his or her affairs handled impartially, fairly, and within a reasonable time by the institutions, bodies, offices, and agencies of the Union. (2) This right includes, in particular: (...) (c) the obligation of the administration to state the reasons for its decisions". Available: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012P/TXT.
5. Maria Albu, *Transparency in Public Administration: Considerations on the Text of the Law*. In: Annales Universitatis Apulensis, Series Jurisprudentia, No.23/2020, Pro Universitaria Publishing House, pp.9-19.
6. ECHR Judgment in the Case of *REGNER v. the CZECH REPUBLIC*. See para. 146 – "The Court reiterates that the principles of adversarial proceedings and equality of arms, which are closely interlinked, are fundamental elements of the concept of a 'fair trial' within the meaning of Article 6 § 1 of the Convention. These require a "fair balance" between the parties: each must be afforded a reasonable opportunity to present its case under conditions that do not place it at a distinct disadvantage compared to the opposing party or parties [*Avotiņš v. Latvia* (GC), No.17502/07, para. 119 and further references, ECHR 2016]. Available: https://hudoc.echr.coe.int/?i=001-183005.
7. Law No.554/2004 on Administrative Litigation, Art. 2(1)(c) – "Administrative act: a unilateral act of an individual or normative nature issued by a public authority, in the exercise of public power, for the purpose of organizing the enforcement of the law or the actual enforcement of the law, which gives rise to, modifies, or terminates legal relationships". Available: https://legislatie.just.ro/Public/DetaliiDocument/57426?fbclid=IwAR23Sn30PO1ZS5ddphvBELs569f0T7jqh-290m_O2awCkH2bGekRaf753gQ.
8. Judgment of the CJEU in Case C-562/13, para. 64 – "For those reasons, the Court (Grand Chamber) rules as follows: Articles 5 and 13 of Directive 2008/ 115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union, as well as Article 14(1)(b) of that directive, must be interpreted as precluding national legislation: which does not confer suspensive effect on an appeal brought against a decision ordering a third-country national suffering from a serious illness to leave the territory of a Member State, where the enforcement of that decision may expose the third-country national concerned to a serious risk of severe and irreversible deterioration of his or her state of health, and – which does not provide for the coverage, to the extent possible, of the basic needs of the third-country national concerned, to ensure that emergency medical care and basic treatment of the illness can be effectively provided during the period in which the Member State in question is required to postpone the removal of that third-country national as a result of the exercise of the legal remedy in question". Available: https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:62013CJ0562.

CZU 341.43:342.7 **DOI: https://doi.org/10.5281/zenodo.20828095**

RECENT APPROACHES TO ASYLUM POLICIES: COMPARATIVE ANALYSIS

Adrian BĂNCILĂ,
PhD, Associate Professor,
Faculty of Police,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0000-0743-8708

Abstract

The paper presents the profound changes in approaches to international protection in the context of global records of forced displacement, estimated at over 120 million people in 2024. The comparative analysis concerns asylum policies in the European Union (EU), the United Kingdom of Great Britain and Northern Ireland (UK) and the United States of America (USA). The research results highlight a common feature, namely generalized and unspoken restriction, characterized by the acceleration of border procedures, the outsourcing of migration management to third countries and the expansion of the concept of "safe third country".

The main aspects studied are the new migration and asylum regulations (for the EU, with mandatory border procedures and a new solidarity mechanism), the post-Brexit divergence and administrative efforts to reduce decision-making backlogs (in the case of the UK) and the dramatic reorientation of policies starting with 2025, including the suspension of refugee resettlement programs (for the USA).

The paper's conclusions highlight the tension between the normative architecture of the 1951 Geneva Convention and current sociopolitical pressures, raising essential questions about the future of international protection.

Keywords: asylum policies, migration, new EU pact, outsourcing, international law, comparative analysis.

ABORDĂRI RECENTE ÎN MATERIA POLITICILOR DE AZIL: ANALIZĂ COMPARATĂ

Abstract

Lucrarea prezintă schimbările profunde ale abordărilor cu privire la protecția internațională în contextul recordurilor globale de deplasare forțată, estimate la peste 120 de milioane de persoane în anul 2024. Analiza comparată privește politicile de azil în Uniunea Europeană (UE), Regatul Unit al Marii Britanii și Irlandei de Nord (UK) și Statele Unite ale Americii (SUA). Rezultatul cercetării evidențiază o caracteristică comună și anume restrângere generalizată și neverbalizată, caracterizată prin accelerarea procedurilor la frontieră, externalizarea managementului migrației către state terțe și extinderea conceptului de „țară terță sigură".

Principalele aspecte studiate sunt noile reglementări privind migrația și azilul (pentru UE, cu proceduri obligatorii la frontieră și un nou mecanism de solidaritate), divergența post-Brexit și eforturile administrative de reducere a restanțelor decizionale (în cazul UK) și reorientarea dramatică a politicilor începând cu anul 2025, inclusiv suspendarea programelor de relocare a refugiaților (pentru SUA).

Concluziile lucrării subliniază tensiunea dintre arhitectura normativă a Convenției de la Geneva din 1951 și presiunile sociopolitice actuale, ridicând întrebări esențiale despre viitorul protecției internaționale.

Cuvinte-cheie: politici de azil, migrație, noul pact UE, externalizare, drept internațional, analiză comparativă.

Introduction. The international asylum system, as inherited from the second half of the 20th century, is currently being asked more and more frequently and with greater urgency a fundamental question: does this framework correspond to its original purpose? We believe that this question should represent at least one of the starting points for analyses focused on recent developments in the field of international protection. Anticipating to some extent the content of this material, we cannot ignore that the post-war international landscape, in which the normative framework surrounding the 1951 Geneva Convention relating to the Status of Refugees was built, is confronted with geopolitical and demographic realities radically different from those that formed the basis of its enactment. In this paper, we propose to carry out a detailed comparative analysis of the way in which three major democratic jurisdictions – the European Union (hereinafter, EU), the United Kingdom of Great Britain and Northern Ireland (hereinafter, UK) and the United States of America (hereinafter – USA) – relate to the not-so-simple issue of granting international protection. We intend to present, with particular attention, two approaches that in our view constitute true "bridgeheads" for the medium-term perspective of refugee law: the Danish model, as an expression of the most restrictive approach possible within the European legal space, and the outsourcing of migration management to third countries, examined through the lens of the case study of the Protocol between Italy and the Republic of Albania on this topic.

We believe that, in all three systems that are the subject of the presentation, we are witnessing the application in a convergent manner of a strategy of "procedural restrictionism", in other words: the restriction of practical access to asylum through administrative and procedural mechanisms, while the formal right to request international protection is preserved; the convergence of the systems analyzed towards this strategy of procedural restrictionism and the maintenance at the formal level of international commitments assumed in the past constitute the central thesis of this work. This strategy presents numerous flaws as it creates large deficits in the functioning of the rule of law, generates judicial delays and, as the outsourcing experience demonstrates, frequently fails precisely in its operational terms.

Methods and materials applied. The research uses a qualitative methodology, based on a comparative analysis of the asylum systems in the European Union, the United Kingdom and the United States of America. The methods applied include:

a) *Documentary analysis* of the relevant legislative instruments (the 1951 Geneva Convention and the 1967 Protocol, the EU Regulations under the New Pact on Migration and Asylum, the British legislation Illegal Migration Act 2023 and the Safety of Rwanda Act 2024, as well as the American executive regulations on asylum);

b) *Jurisprudential analysis* of the judgments of the Court of Justice of the European Union, the Supreme Court of the United Kingdom, the European Court of Human Rights and the American federal courts;

c) *The case study* of the Italy-Albania Protocol of November 2023, examined as a paradigmatic example of the challenges raised by the outsourcing of asylum procedures;

d) *Analysis of statistical data* provided by UNHCR, EUAA and competent national authorities for the period 2022-2025.

Discussions and results obtained. I. The Global Context of Forced Displacement. According to estimates by the United Nations High Commissioner for Refugees (UNHCR), by mid-2024, forced displacement characterized the situation of over 120 million people globally, a number that, from a European perspective, exceeds the combined populations of France and Spain. Also, from a refugee law perspective, in the EU alone, approximately

one million applications for international protection were registered in 2024, according to the European Union Agency for Asylum [1].

From a simple analysis of the text of the 1951 Geneva Convention, it can be deduced that the international act was adopted for a specific type of applicant: the individual fleeing individual persecution that can be defined by reference to race, religion, nationality, political opinion or membership of a particular social group [2]. Now, returning to the numbers mentioned, what is important for this analysis is not so much the quantity or volume of displacements, but rather their quality or structural nature. We believe that the entire regulatory framework of refugee law is built around this particular model that was fully applicable, from a socio-historical perspective, at the time of the adoption of the Convention.

We currently observe population displacement caused by combinations of conflicts (not necessarily of the military nature of those to which the Convention refers), agricultural collapse induced by climate change, state fragility (the so-called "failed" states, "narcostates", etc.) and economic despair, which do not clearly fit into any of the five grounds provided for by the Convention. This structural dissonance between the construction of refugee law, built on the pillar, valid in 1951, of a post-war European context, and the 21st century reality of displacement constitutes the essential background of each policy option examined below [3, p.3].

II. The European Union: From the Common European Asylum System to the Pact on Migration and Asylum. Managing a multitude of systems (and, implicitly, national approaches and policies in the field of refugee protection) was not feasible for European communities, which is why the EU, starting from the international legal order, on the path of its own development and transformation into a unique construction at international level, starting from the Dublin Convention, built the Common European Asylum System (CEAS). The purpose of the CEAS was from the very beginning that of the EU's main coordinated legal response to the challenge of harmonizing refugee protection in the 27 (currently, in relation to the UK's exit from the EU in 2020, our emphasis) Member States. Therefore, continuously and progressively developed since 1999, the CEAS had as its objective the achievement of convergence in reception, qualification and procedure standards. The result is a remarkable one, namely a common interstate legal area of protection, governed by jointly adopted legal norms.

The legislator cannot, however, anticipate the multitude of situations that may arise in practice, nor can he today, for understandable reasons of legal certainty, devise excessively general and abstract regulations intended to be applied over the years through the interpretation of legal experts and case law such as the Law of the Twelve Tables. International life at the end of the 20th and beginning of the 21st centuries has proven considerably more complex. The iterations of the Dublin Regulation, which assigns responsibility for examining an asylum application to the state of first irregular entry, have created an inherent structural inequity: disproportionate administrative and financial pressure on peripheral Member States such as Greece, Italy, Bulgaria and Malta, while facilitating secondary movement to Northern and Western Europe. The refugee crisis of 2015, with over a million arrivals in a single year, exposed these structural deficiencies with particular acuity [4, p.17].

2.1. Pact on Migration and Asylum. After almost four years of protracted interinstitutional negotiations, the European Union adopted the New Pact on Migration and Asylum in May 2024. The European Parliament approved the package on 10 April 2024; the Council endorsed it on 14 May 2024. The instruments entered into force in June 2024,

with a two-year transition period before full application, scheduled for June 2026 [5].

The Pact comprises a dozen legislative instruments, the most significant of which are: 1) The Asylum Procedure Regulation (EU 2024/1348) – which introduces mandatory border admissibility procedures; 2) The Asylum and Migration Management Regulation (EU 2024/1351) – which establishes a new solidarity mechanism; 3) The Screening Regulation – which creates a pre-screening process for all irregular arrivals (EU 2024/1356); and 4) The Border Return Regulation (EU 2024/1349). In relation to the brief list above, we would like to highlight the Asylum Procedure Regulation (EU 2024/1348) because, from our perspective, it represents, through the way it defines solidarity at European level in the field of migration and asylum, a real turning point in the European architecture in this area [6].

We appreciate, from studying the construction of the European legal norms that make up the pact we are referring to, that at the heart of the regulation lies a new approach of carefully controlled restrictionism. By this concept we understand the contradiction between the form and substance of the regulation; in other words, the form (which refers to the right to international protection) does not match the substance (which results in a significant restriction of the rights of applicants for international protection and a most likely result in the rejection of their application). We argue our position by arguing that, although formal legal channels are preserved and the right to seek asylum is not abolished, in fact, the procedural acceleration at the borders, the extended application of the concept of "safe third country" and mandatory border procedures for applicants from countries with recognition rates below 20% together restrict the practical and effective scope of access to asylum in ways that the formal preservation of the right does not highlight [7].

The public reception of the new regulations is mixed, with criticisms not lacking for the restriction of procedural rights and the risk of deportation of individuals before the completion of appeal procedures. The opinions expressed characterize the trajectory of the Pact as a shift from a protection-focused model to a management-focused one [8].

III. The United Kingdom: Post-Brexit Divergence and the Limits of Unilateralism. The UK's exit from the EU and, consequently, the break of this state with long democratic and liberal traditions from the legal order built by the European Communities has made possible the emergence of an extremely interesting case study in contemporary asylum governance that answers the question of what happens when a major liberal democracy regains full control over the regulation of its immigration system.

The answer, so far, has been a very interesting one. The Conservative government's most ambitious restrictive initiative, the Rwanda policy, aimed at transferring asylum seekers who had arrived irregularly in Rwanda for processing outside British territory. The UK Supreme Court invalidated this policy in November 2023, ruling that Rwanda could not be considered a safe third country under international and domestic law [9]. Subsequently, the parliamentary majority passed the Safety of Rwanda Act 2024 as an alternative legislative solution, declaring Rwanda a safe third country under the sovereign prerogatives of any state to assess a particular matter [10]. However, the newly installed Labour government abandoned the policy entirely upon taking office.

The current UK approach is based on three pillars: increasing returns of failed applicants; reforming the appeals system to reduce delays; and, crucially, adjusting the nature of refugee protection towards a temporary model. Protection is increasingly formulated as being conditional on the continued impossibility of safe return. This logic is analytically significantly closer to the Danish approach, an aspect acknowledged and reinforced even

by the authorities who cite the Danish experience and praise the deterrent effects of this policy on migrants and people smugglers [11].

The UK has set out to reduce the historic backlog of applications for international protection and the UK Government's statement on migration and asylum highlights clear administrative performance in this regard. As a result, around 85,000 initial decisions have been made since July 2024, reducing the backlog by 47% since the peak in June 2023. Returns have increased by 10% in the twelve months to October 2025, with over 48,000 total returns recorded since July 2024. However, it is important to note that of the 58,000 applications rejected between June 2024 and June 2025, fewer than 11,000 people have actually been returned [11]. We wanted to highlight the gap between legal rejection and physical return because these figures do not represent marginal statistical mentions but constitute the central operational challenge of restrictive asylum policy, a challenge that no jurisdiction examined has successfully resolved.

IV. United States: Executive Power, Judicial Coercion, and the Imbalance between Them. The American asylum system operates within a constitutional framework that is fundamentally different from both the European supranational model and the structure of British parliamentary sovereignty. Executive power over immigration is considerable but not unlimited, being embedded in the much-discussed system of checks and balances and subject to judicial review. In recent years, the relationship between the judiciary and the executive has come to characterize American asylum policy.

4.1. The Biden Administration: Convergence toward Restriction. Between 2021 and 2025, American asylum policy has been characterized by what we believe can be described as reluctant restrictionism. Coming after a first Trump administration (2016-2020) and taking over a US deeply divided on deep issues and still in shock after the violence that engulfed the US parliament building, despite initial commitments to restore a humanitarian approach, the Biden administration introduced, in May 2023, the "circumvention of legal channels" rule – a regulation that establishes a relative presumption of ineligibility for asylum for persons who have transited third countries without seeking protection or who have not used designated legal channels, including the CBP One application system [12, p.31320]. The structural similarity of this rule to the European concept of "safe third country" is analytically significant and suggests that the convergent logic of procedural restrictionism operates in different legal and political systems.

In January 2025, Presidential Proclamation 10888 further restricted access to asylum at the southern border. Defensive asylum applications tripled between fiscal years 2022 and 2024, reaching approximately 897,000 in 2024, while in 2025 the trend was maintained, albeit slightly lower (approximately 831,000) [13, p.8].

4.2. The Trump Administration (2025–present): The Abrupt Restriction. The return of the Trump administration in January 2025 produced what we believe should be characterized not as a continuation of the restrictionist trend, but as a qualitative break with it. Refugee resettlement has been effectively suspended, with the admissions cap set at 7,500 for fiscal year 2026, the lowest in the program's 45-year history, down from a peak of over 100,000 admissions in fiscal year 2024. Humanitarian permit programs for Cuban, Haitian, Nicaraguan, and Venezuelan nationals, which had admitted approximately 532,000 people, have been terminated. Asylum decisions were suspended entirely in December 2025. The result is a system that is no longer just restrictive in its procedures but restrictive in its very willingness to accept [14]. If willingness to accept is the raison d'être of this system, its fundamental limitation may entail the de facto abolition of the system.

V. The Danish Model: The Exception in the European Legal Area. Denmark occupies a unique position in the legal system of the European Union (until a few years ago it could be argued in favour of sharing this position with Ireland but in the context in which the latter preferred to join fully, opt-in, the Union architecture such an opinion no longer has support, our mention). According to Protocol No.22 to the Treaty on the Functioning of the European Union (TFEU), the Danish opt-out protocol, Denmark does not participate in EU measures adopted under Title V of the TFEU, which covers the Area of Freedom, Security and Justice. In concrete terms, this means that Denmark is not bound by the Dublin Regulation, the Qualification Directive, the Asylum Procedures Directive or, crucially, the New Pact on Migration and Asylum [15].

It is important to specify the limitations of the opt-out clauses applicable to Denmark after the Edinburgh Council and in the context of the adoption of the Treaty of Amsterdam. Denmark, as a state that has ratified the 1951 Geneva Convention and its 1967 Additional Protocol, is equally bound by all EU Member States that are signatories to this international convention. It is a member of the Council of Europe and consequently respects and applies the European Convention on Human Rights. On the subject of international protection, the Kingdom of Denmark has concluded parallel agreements with the EU, and has incorporated the Dublin III rules into national law on an intergovernmental basis. However, Denmark has the legal autonomy to legislate on asylum in ways that would, for other Member States, constitute direct violations of EU secondary law. This autonomy has been exercised with remarkable consistency over the past decade – and with cross-party political support that distinguishes the Danish approach from the politically contested restrictionism observed in other jurisdictions.

Regarding the new Pact on Migration and Asylum and how Denmark relates to the major change in European policies, the specific position of the kingdom is defined by the use of its legal reservations to EU asylum legislation, but the country has chosen to adhere to essential components such as the Screening Regulation, the reformed Eurodac system and certain responsibility rules of the Asylum and Migration Management Regulation through parallel agreements and Schengen cooperation. However, Denmark is not obliged to participate in the new solidarity mechanism aimed at the relocation of migrants, and is currently working on a national legislative proposal to be implemented by early 2026 [16]. In this context, the Danish Refugee Council, an internationally recognized non-governmental organization, expresses concern that the new Pact could restrict the fundamental rights of asylum seekers. The organisation's main recommendations aim at broadening the definition of family to prevent the separation of asylum seekers who live and make their household together and ensuring access to free and individual legal assistance from the earliest stages of the border procedure. They also insist that the best interests of the child should take precedence by immediately appointing a guardian for unaccompanied minors and advocate for humane reception conditions instead of detention, which should remain a measure of last resort. Finally, the Danish Refugee Council stresses that the movement of migrants between Member States should be addressed by improving living conditions, not sanctions. While a common European system is necessary, it must put human rights and judicial oversight first to ensure that administrative efficiency does not undermine the real protection of refugees [16].

5.1. Smykkeloven – confiscation of jewellery from asylum seekers. The term "smykeloven", the jewellery laws, entered the international discourse in January 2016, when the Danish Parliament passed legislation authorising the authorities to confiscate cash and valuables exceeding approximately 10,000 Danish kroner from newly arrived

asylum seekers, in order to compensate for the costs of receiving them. The law exempted objects of sentimental value, but the public communication dimension was extremely strong. Denmark was signalling, both to potential asylum seekers and to its own citizens (and electorate, see the observation in the previous paragraph regarding the cross-party approach to restrictive policies with mostly marginal opponents in contrast to the strong opposition positions in EU states, our mention), that the costs of reception would be borne, to the extent legally possible, by the newcomers themselves [17].

Smykelove has attracted significant international criticism, including comparisons with absolutely appalling historical precedents. For the present analysis, however, we must address two questions analytically; first, is the policy compatible with the specific provisions of the 1951 Convention? Second, is it operationally effective as a deterrent?

On the first question, UNHCR has concluded that confiscation of property does not, in itself, violate the specific provisions of the 1951 Convention, provided that they are otherwise complied with. The Convention does not contain a general guarantee that asylum seekers will retain their personal property during the reception period [18].

On the second question, operational effectiveness, the evidence is considerably more ambiguous. The number of arrivals in Denmark has decreased since 2015, but this decrease is influenced by multiple simultaneous factors: border controls reintroduced by other Schengen states, the EU-Turkey Statement of March 2016 and general surveillance and protection measures along the Western Balkans route. Furthermore, the application of this law in the period 2016-2025 did not bring significant revenues to the Danish state budget and by excluding Ukrainian refugees from the special confiscation after 2022, all the premises were created, in some opinions, to find discrimination between refugees according to the nationality criterion. Therefore, quantifying the specific deterrent effect of the aforementioned provisions is, analytically, very difficult [16].

5.2. Temporary Protection and the Cessation Clause: The Syrian Question. The most legally significant element of the contemporary Danish asylum framework is its approach to the duration and nature of protection. In 2021, Denmark became the first European state to start revoking residence permits granted to Syrian refugees, based on the finding that the situation in certain parts of Syria, in particular the Damascus region, had improved sufficiently to make return safe.

This decision was based on an interpretation of the cessation clause in Article 1C(5) of the 1951 Convention, which provides that refugee status ceases when "the circumstances in connection with which the person was recognised as a refugee have ceased to exist" [2, Article 1C(5)]. Denmark's application of this clause to Syria was significant and noteworthy for at least two reasons. First, the Danish state failed to take into account that the armed conflict in Syria was continuing in other parts of the country and second, the Danish state did not receive any formal recommendation from UNHCR that Syria, or even the Damascus region specifically targeted for this purpose, was safe for return. The Danish authority competent for international protection processed over 500 revocation cases and cancelled a not inconsiderable number of protection permits. The problem that arose is that many people whose permits were revoked did not, in practice, return to Syria, creating a category of people on Danish territory without valid refugee status and without a real possibility of return [19].

This result is not a marginal anomaly but illustrates a structural tension that runs through the entire contemporary agenda of restrictionism: the gap between the legal cessation of status and the practical ability to effect return. Denmark has encountered, on a smaller scale, exactly the same dynamics that produce the British gap between 58,000

rejections and 11,000 returns mentioned above. In essence, we conclude that legal restrictionism and operational effectiveness are not the same thing, and this is an element visible to ordinary citizens and capitalized on in electoral elections.

5.3. Denmark's "Fair and Realistic" Policy. The "Fair and Realistic" immigration policy (Retfærdig og Realistisk), launched in 2018 by the Danish Social Democratic Party, marks a significant shift towards stricter regulations, despite its leftist orientation. Thus, in addition to asset confiscation measures, the Danish approach is characterized by a coherent set of restrictive policies that target all stages of the migration process. In terms of admission, Denmark has introduced significantly stricter rules for entry into the country, including limiting non-Western immigration and postponing family reunification by imposing minimum ages for spouses and substantial income requirements. Also in this context is the proposal (a precursor to the idea later taken up by the UK and detailed above) to process asylum applications in centres located outside Europe, with Rwanda being one of the countries nominated in this regard. In terms of integration, Danish legislation makes the granting of social assistance conditional on participation in 37 hours of work or vocational training per week. In a particularly controversial move, certain residential areas with a high concentration of immigrants have been officially declared "vulnerable areas", a designation that makes them eligible for administrative measures such as the demolition of social housing and the restriction of freedom of assembly for events where Danish is not spoken. In parallel with these domestic measures, Denmark has significantly increased development aid to countries of origin, aiming to address the root causes of migration – a component often ignored in critical analyses of the Danish model, but which completes the picture of a migration policy that is deeply coherent in its restrictive and, at the same time, preventive logic.

This policy, which has significantly reduced the number of asylum seekers, has been criticised for its character, which in some opinions deviates from the humanitarian nature of refugee law, but has managed to regain support from left-wing voters and has influenced European discussions on migration [20].

This ambition is directly relevant to the EU-wide debate, as it prefigured – and, to a certain extent, inspired – both the UK's Rwanda Policy and the EU's externalisation agreements. The transfer of experience between these systems is explicit: Danish officials have been consulted by other European governments; the Danish approach has been cited in European Parliament debates; and the conceptual vocabulary of off-territorial processing has migrated from the Australian context – where it is operational from where it has been operational since 2013 on Nauru and Manus Islands – via Denmark, in the mainstream European political discourse [21].

VI. Outsourcing: The Italy-Albania Case Study. Outsourcing, the delegation of migration management to third states, is not new in itself in international law but is currently surprising in its scale, systematization and integration into the formal legal architecture of democratic states. In our opinion, the most significant and edifying current example is the Protocol between Italy and the Republic of Albania.

As we have stated on another occasion [22], the agreement signed between Italy and Albania in November 2023 represented yet another attempt by a state (this time an EU member) to outsource migration management procedures. Through the agreement, Italy obtained Albania's agreement to build and manage two asylum seeker processing centers on Albanian territory, in the towns of Shëngjin and Gjadër. The stated aim was to reduce the migratory pressure on the Italian asylum system and to speed up the processing of people from countries considered "safe" [23].

The centres in Shëngjin and Gjadër were created to temporarily house adult men arriving by sea in Italy, with a view to processing asylum applications within a rapid 28-day timeframe. This project involves administrative collaboration between Italy and Albania, with the support of Frontex, but raises serious legal dilemmas regarding compliance with EU law and the Geneva Convention. Although the management takes place outside Italian territory, critics point out that Italy remains responsible for guaranteeing the fundamental and procedural rights of migrants, while also pointing out the absence of an effective monitoring mechanism to prevent possible abuses [23].

The implementation of the Protocol has been, by any objective assessment, an operational failure – and the reasons for this failure are structurally instructive, precisely because they reveal the inherent limitations of the outsourcing model as it was conceived. Initial estimates for the implementation of the project ranged from €670 million to €830 million over a five-year period, including construction, personnel, security and logistics costs. Subsequent reports indicated significant budget overruns, with over €74 million spent on infrastructure alone, while some contracts were awarded directly, without a public tender. This approach raised suspicions about the lack of transparency and efficiency of public spending [23].

In implementing the agreement, the Italian authorities attempted to transfer three groups of migrants to Albania between 2023 and 2025. After Italian courts blocked the return procedures for the first two groups (from 2023 and 2024, with around 30 people being managed) [22], the Italian authorities attempted a third time to operationalise the agreement in January 2025 [23]. On 28 January 2025, an Italian military vessel, Cassiopea, transported 49 migrants (from Bangladesh, Egypt, Ivory Coast and Gambia) from international waters to the port of Shëngjin, Albania, for processing at the Gjadër centre. On the same day, following the provisions of the agreement, 5 of them (including minors and people with medical problems) were sent to Italy to continue the procedures, leaving 44 people in the Republic of Albania for processing at the said centre. The requests to remain on Italian territory of 43 of them were rejected through an accelerated procedure, with only one migrant receiving a favourable solution. On the occasion of judging the appeals filed by them, the Court of Rome ordered the suspension of the detention procedures of the 43 migrants, requesting that the decision in their case be taken after the ruling of the Court of Justice of the European Union on the compatibility of Italian legislation with that of the Union. The Italian court's referral was the subject of cases C-758/24 and C-759/24 before the Court of Justice of the European Union [23].

The Court of Justice of the European Union considered that the lack of publicity and verifiability of the sources used by the legislature to designate a country as "safe" infringes the right to an effective remedy. The asylum seeker and the national court must have access to the sources of information used in order to be able to challenge their reliability, relevance and timeliness. This requirement is in line with the case-law in cases C-564/181 and C-406/222, where the Court insisted on the substantial nature of procedural guarantees [24].

This decision revealed a fundamental incompatibility between the political ambition of outsourcing and the legal constraints imposed by secondary EU law, constraints that apply to the Italian authorities even when they are physically operating on Albanian territory. The concept of an "Italian jurisdictional enclave" did not suspend, in practice, the applicability of EU asylum law. It imported all the protective constraints of EU law into the Albanian facility. The geography of outsourcing did not determine its legal architecture. The Italian government responded by issuing executive decrees designating additional

countries as "safe" and by enacting legislation that, in the government's interpretation, limited judicial review of these designations. This strategy was, as I have shown above, inconsistent with the requirements of EU law [24].

6.1. Four structural lessons. The Italy-Albania case offers four essential lessons for any future analysis of outsourcing:

1) First, the geography of outsourcing does not determine its legal architecture. Moving processing to a third country does not place it outside the applicable legal framework, if the processing state remains bound by that framework. This is the fundamental legal miscalculation common to both the Italian model and the British Rwanda policy [24].

2) Second, the designation of a "safe country" is not a policy option isolated from judicial review and consequently the court must be provided with all the verifiable factual means and conditions to conduct a coherent objective examination. The gap between the political claim of safety and the legal standard of safety is, structurally, the point at which outsourcing agreements fail [24].

3) Third, the operational costs of failed outsourcing are not negligible. The Italy-Albania Protocol cost substantial public resources, the construction and equipment of buildings, maintenance, staffing and litigation management, for a system that processed a negligible number of cases [23].

4) Fourth, outsourcing agreements with neighboring states create structural dependencies that go beyond the specific context of migration policy. Albania's candidacy for EU membership, its bilateral relationship with Italy, its membership of the North Atlantic Treaty Organization, its economic ties with the Italian diaspora, these are not irrelevant to the sustainability and political economy of the Protocol. Migration agreements are never just about migration. They are embedded in broader geopolitical relations, and the obligations and asymmetries they create persist [22].

Conclusions. The analysis undertaken in this paper allows for the formulation of a set of structural conclusions regarding the contemporary evolution of asylum policies in the jurisdictions examined.

1) The first conclusion is one of convergence. In three very different legal and constitutional systems – the supranational law of the European Union, British parliamentary sovereignty and the constitutional separation of powers in the United States – we observe the same dominant strategy: the progressive restriction of practical access to asylum through procedural mechanisms, while the formal right to seek international protection is preserved. In our view, this is not a coincidence but reflects a calculated political logic that attempts to manage public concern about immigration without overtly violating international legal commitments. Procedural restrictionism is, in a sense, the art of maintaining the letter of international law while modifying its practical substance [7].

2) The second conclusion is one of structural instability. Procedural restrictionism does not resolve the underlying tensions between the volume of movements and the administrative capacity of receiving states. It postpones them, in judicial delays, in the gap between rejections and returns, in the operational failure of outsourcing agreements. The Danish experience with the revocation of the status of Syrians, the British experience with the Rwanda Policy, and the Italian experience with the Albania Protocol all illustrate, from different angles, the same fundamental dynamic: legal form and operational substance have diverged to the point where the system maintains its architecture while emptying its function.

3) The third conclusion is the most unpleasant and therefore perhaps the most important. The 1951 Geneva Convention was designed for a specific historical moment and

a specific type of applicant. Its concepts were appropriate for that moment. They are increasingly inadequate for the world of 2026. The question of whether the Convention requires systemic reform or whether its existing flexibility is sufficient to accommodate contemporary patterns of movement is no longer a marginal academic debate. It is, in our view, a central question of international refugee law that, unlike most legal questions, cannot be answered by courts alone [21, p.45].

Bibliographical references

1. EUAA, *Asylum Report* 2025. Luxembourg: Publications Office of the European Union, June 2025. Available: https://www.euaa.europa.eu/sites/default/files/publications/2025-06/2025_Asylum_Report_Executive_Summary_EN.pdf.
2. *Convention relating to the Status of Refugees*, Geneva, 28 July 1951. In: Official Gazette of Romania, Part I, No.148 of 17 July 1991.
3. UNHCR, Global Trends: Forced Displacement in 2024. Geneva: United Nations High Commissioner for Refugees, 2025.
4. European Court of Auditors, *Migration Policy and the EU*. In: ECA Journal, 2023, No.2, pp.12-18.
5. European Commission, *Pact on Migration and Asylum*, *Brussels: European Commission*, 2024. Available: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en (accessed 13.04.2026).
6. Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on Asylum and Migration Management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013. In: Official Journal of the European Union, L series, No.1351/2024.
7. Tineke Strik. *The New Pact on Migration and Asylum: Towards a Realistic Asylum and Migration System?*. Brussels: European Policy Centre, 2024.
8. Arnoux Bellavitis M., Ripoll Servent A., *The New Pact on Migration and Asylum in a shifting political context: Depoliticization and repoliticization in EU external migration policy. Mediterranean Politics*. 2025. Available: https://doi.org/10.1080/13629395.2025.2498846.
9. UK Supreme Court, on the application of AAA and others (Respondents/Cross Appellants) v Secretary of State for the Home Department (Appellant/Cross Respondent), UKSC/2023/0093, 2023.
10. Safety of Rwanda (Asylum and Immigration) Act 2024, UK Public General Acts, 2024, p.8. Available: https://www.legislation.gov.uk/ukpga/2024/8/enacted (accessed 13.04.2026).
11. UK Home Office. Restoring Order and Control: Statement on Asylum and Returns Policy, London: HM Government, 2025. Available: https://www.gov.uk/government/publications/asylum-and-returns-policy-statement/restoring-order-and-control-a-statement-on-the-governments-asylum-and-returns-policy.
12. Department of Homeland Security, Department of Justice - Executive Office for Immigration, Circumvention of Lawful Pathways Final Rule, Federal Register, vol. 88, No.93, 16 May 2023, p.31314-31478. Available: https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf (consulted 14.04.2026).
13. Congressional Research Service, Asylum Process in Immigration Courts and Selected Trends, Washington D.C.: CRS Report R46538, 2025. 42 p.
14. Batalova J. *Refugees and Asylees in the United States*. Migration Policy Institute, Washington D.C. Available: https://www.migrationpolicy.org/article/refugees-and-

asylees-united-states-2026 (consulted 14.04.2026).
15. Protocol No.22 on the position of Denmark, annexed to the Treaty on the Functioning of the European Union. In: Official Journal of the European Union, C 326/299, of 26.10.2012. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=OJ:C:2012:326:FULL (consulted 14.04.2026).
16. Danish Refugee Council, EU Pact on Migration and Asylum – Policy Analysis, 2024. Available: https://asyl.drc.ngo/en/policy-and-recommendations/advocacy/european-asylum-and-migration-policy/eu-pact-on-migration-and-asylum (consulted 14.04.2026).
17. https://globalvoices.org/2016/02/01/seizing-jewelry-isnt-the-only-awful-change-to-denmarks-refugee-law (accessed 14.04.2026).
18. UNHCR, Observations on the Proposed Amendments to the Danish Aliens Act, Geneva: 2016. Available: https://www.unhcr.org/nordic-and-baltic/news/observations-unhcr-denmarks-proposed-amendments-aliens-act (consulted 14.04.2026).
19. https://www.thelocal.dk/20220613/denmark-reverses-residence-decisions-for-hundreds-of-syrian-refugees (accessed 14.04.2026).
20. https://newsweek.ro/international/frontierele-controlate-cum-au-oprit-social-democratii-danezi-marsul-extremei-drepte, https://www.infomigrants.net/en/post/69018/eu-announces-rise-in-deportations-while-denmark-signals-it-is-prepared-to-overstep-echr, consulted on 14.04.2026.
21. UNHCR, Global Compact on Refugees, 2018. Available: https://www.unhcr.org/about-unhcr/overview/global-compact-refugees (accessed 14.04.2026).
22. Băncilă A. *Migrant centers established in the Republic of Albania by Italy: Operationalisation, Controversies and Positions*. In: The volume of the International Scientific Conference "Challenges and Strategies in Public Order and Safety", December 2024, Bucharest, University Publishing House, vol. 2, ISBN 978-606-11-8771-3, pp.86-96.
23. Băncilă A. *A possible failure of Italy's immigration management policy, the migrant centers in Albania*. In: International Scientific Conference "Challenges and Strategies in Public Order and Safety", 11th Edition, Bucharest, November 20-21, 2025, Editura Universitară, Bucharest, 2025, ISSN 3119 – 9550, DOI: 10.5682/31199550, pp.330-339.
24. CJEU, C-406/22, paragraphs 47-49 of the judgment; CJEU, C-758/24 and C-759/24, General Conclusions, corroborated with the Simmenthal case, C-106/77.

CZU 343.98:343.54 **DOI: https://doi.org/10.5281/zenodo.20828186**

THE CONCEPT, CONTENT AND SYSTEM OF FORENSIC SUPPORT FOR THE INVESTIGATION (EXAMINATION) OF CRIMES CONCERNING SEXUAL LIFE

Olesea BLAȘCU,
PhD Student, Moldova State University,
University Assistant, Faculty of Law and Public Administration,
"Bogdan Petriceicu Hasdeu" University Center of Cahul,
Technical University of Moldova
ORCID: 0000-0001-6601-6951

Abstract

The investigation of crimes infringing upon sexual life constitutes one of the most complex and sensitive areas of criminal prosecution activity, given the specific nature of the protected legal interest, the particularities of the evidentiary process, and the profound impact on the injured party. Judicial and prosecutorial practice demonstrates that the effectiveness and quality of the detection and investigation of such crimes depend essentially on the level of criminalistic support provided to the investigative process, in correlation with contemporary achievements of science and technology. In this context, the study of the concept, content, and system of criminalistic support for the investigation of crimes concerning sexual life acquires particular importance from both theoretical and practical perspectives. The concept of "criminalistic support for the investigation of crimes", established in specialized literature and increasingly employed in the practice of criminal prosecution bodies, reflects the necessity of a systemic, integrated, and scientifically grounded approach to investigative activities.

The relevance of this study is determined by the dynamics of criminality in the field of sexual crimes, the diversification of methods of their commission, as well as the heightened requirements regarding the protection of the fundamental rights of victims and other participants in criminal proceedings. Modern criminalistic support implies not only the application of technical forensic means but also the use of methods, tactical procedures, and methodological recommendations adapted to the specific features of these categories of crimes. Therefore, an in-depth analysis of the concept, content, and system of criminalistic support for the investigation of crimes concerning sexual life is indispensable for optimizing the activity of criminal prosecution bodies, increasing the effectiveness of evidence-gathering, and ensuring an objective, comprehensive investigation in accordance with contemporary standards of forensic science.

Keywords: crime, sexual life, investigation, system, criminalistic support, criminal prosecution body, information technologies, criminalistic characteristic, tactics, forensic technique, planning, organization.

NOȚIUNEA, CONȚINUTUL ȘI SISTEMUL ASIGURĂRII CRIMINALISTICE A INVESTIGĂRII (CERCETĂRII) INFRACȚIUNILOR PRIVIND VIAȚA SEXUALĂ

Abstract

Investigarea infracțiunilor ce aduc atingere vieții sexuale reprezintă una dintre cele mai complexe și sensibile direcții ale activității de urmărire penală, dat fiind specificul obiectului juridic protejat, particularitățile probatoriului și impactul profund asupra persoanei vătămate. Practica judiciară și de urmărire penală demonstrează că eficiența și calitatea activității de descoperire și cercetare a acestor infracțiuni depind în mod esențial de nivelul asigurării criminalistice a procesului de investigare, raportat la realizările contemporane ale științei și tehnicii. În acest context, studiul noțiunii, conținutului și sistemului asigurării criminalistice a investigării infracțiunilor privind viața sexuală capătă o importanță deosebită atât din perspectivă teoretică, cât și practică. Conceptul de „asigurare criminalistică a investigării infracțiunilor", consacrat în literatura de specialitate și tot mai frecvent utilizat în practica organelor de urmărire penală, reflectă necesitatea unei abordări sistemice, integrate și fundamentate științific a activităților de cercetare penală.

Actualitatea studiului este determinată de dinamica fenomenului infracțional în domeniul infracțiunilor sexuale, de diversificarea modurilor de comitere a acestora, precum și de exigențele sporite privind respectarea drepturilor fundamentale ale victimelor și ale persoanelor implicate în procesul penal. Asigurarea criminalistică modernă presupune nu doar aplicarea mijloacelor tehnico-criminalistice, ci și utilizarea metodelor, procedeelor tactice și recomandărilor metodologice adaptate particularităților acestor categorii de infracțiuni. Prin urmare, analiza aprofundată a noțiunii, conținutului și sistemului asigurării criminalistice a investigării infracțiunilor privind viața sexuală este indispensabilă pentru optimizarea activității organelor de urmărire penală, creșterea eficienței probării și asigurarea unei investigări obiective, complete și conforme standardelor moderne ale științei criminalistice.

Cuvinte-cheie: infracțiune, viață sexuală, investigare, sistem, asigurare criminalistică, organ de urmărire penală, tehnologii informaționale, caracteristică criminalistică, tactică, tehnică criminalistică, planificare, organizare.

Introduction. In the opinion of M. Gheorghiță, "The conduct of illicit activity, like any human activity, is accompanied by certain persons and characterized by a spatio-temporal framework, resulting in the production of material changes in the surrounding environment and in the creation of traces of the actions performed. The examination thereof is capable of directing the investigation toward the clarification of issues of interest, specific to the type of illicit activity" [3, p.69].

The activity of detecting and investigating crimes can be qualitative and effective only insofar as it is criminalistically supported at the level of contemporary achievements of science and technology. Addressing the prospects for the development of forensic science, N.A. Selivanov emphasized: "The introduction of new concepts and the improvement of existing ones contribute to a deeper understanding of the object of forensic science, to the emergence of new directions of research, to the expansion of the spectrum of theoretical theses and methodological recommendations, as well as to a more solid assimilation and active use of forensic knowledge" [10, p.189].

"A qualified investigation of crimes", maintains researcher M. Gheorghiță, "presupposes not only skill in the detection, recording, and collection of evidence, but also its thorough and continuous analysis in order to obtain additional data; on this basis, it entails exercising control over the course of the investigation (prior knowledge of the direction of the inquiry, the volume and state of the case at any stage), and adopting well-founded decisions regarding the continuation of criminal prosecution" [2, p.60].

The author S. Doraș states that "The timely detection and comprehensive investigation of acts constituting crimes requires organized work, the conduct of all investigative activities in an orderly manner, according to a judicious plan and based on factual data" [1, p.281]. Researchers Gh. Golubenco and V. Colodrovschi argue that "Within the system of measures to counteract crimes, the methods and technical-forensic means play an important role. These effectively contribute to the detection and collection of traces of the crime and the perpetrator, enable the acquisition of useful information for the pursuit of offenders and the proof of their guilt, while also ensuring a high level of documentation of factual circumstances and evidentiary procedures" [12, p.5].

The detection of crimes, identification, and criminal prosecution of offenders often involve extensive and diverse activities, requiring the mobilization of significant human and material resources [11, p.210; 13, p.52]. In this context, it is fully justified to speak of the concept of "criminalistic support for the investigation of crimes", which in recent years has been firmly integrated into the terminological apparatus of forensic science. The notion of "criminalistic support for the investigation of crimes" was introduced into the scientific discourse and first defined in 1979 by V.G. Kolomațkii, who characterized it as

"a system for implementing, in the practical activity of responsible persons, subdivisions, services, and internal affairs bodies tasked with maintaining public order and combating crime, forensic knowledge materialized in the capacity of practitioners to utilize scientific, methodological, and tactical forensic recommendations, technical-forensic means, as well as the technologies for their application" [7, p.62].

Essentially, a similar definition of criminalistic support for the investigation of crimes was formulated by R.S. Belkin, who considered it "a system of forensic knowledge, skills, and abilities based on such knowledge of law enforcement personnel, oriented toward the application of forensic means, methods, and technologies for the prevention, detection, and investigation of crimes" [15, p.26].

Within the content of this system, R.S. Belkin included: forensic knowledge, forensic science, and forensic techniques. The specification of the term "science" through the use of the notion of "knowledge" is fully justified, since criminalistic support constitutes a distinct category within forensic science. Currently, the prevailing view in forensic science is that criminalistic support represents a complex activity in terms of its content, aimed at creating conditions for the continuous preparation of law enforcement bodies for the efficient use of forensic methods, means, and recommendations in order to detect and investigate crimes [6, p.14].

A.F. Volînskii notes that, in the definition of criminalistic support for the detection and investigation of crimes formulated by V.G. Kolomaţkii, the essence and content of this scientific category are not fully reflected, as it is limited to the exclusive sphere of activity of internal affairs bodies, and not of all law enforcement agencies, and, in terms of content, it is reduced solely to the issues of applying forensic knowledge in the practice of detecting and investigating crimes [30, p.116].

However, in order to implement anything in particular, it is first necessary to develop, create, and establish a procedure for its use, as well as to materialize the legal value of the results obtained [6, p.15]. At the same time, V.G. Kolomaţkii and R.S. Belkin focus exclusively on forensic techniques, although the doctrine of criminalistic support encompasses all branches of forensic science; moreover, to a certain extent, like forensic science as a whole, it is enriched by contributions from provisions originating in other fields of scientific knowledge.

In fact, in addressing the notion of criminalistic support for the detection and investigation of crimes, V.P. Lavrov aligns with the position expressed by A.F. Volînskii [17, p.6]. Subsequently, this definition—sometimes with minor editorial clarifications, but preserving its essence—was supported by K.E. Demin, A.S. Shatalov, A.V. Shmonin, and others [28, p.2].

According to A.P. Paţkevici, criminalistic support for the investigation of crimes is understood as "the activity of responsible personnel and subdivisions of internal affairs bodies, characterized by a comprehensive approach to solving interdependent tasks of a legal, organizational, material-technical, and instructional-methodological nature, which arise in the process of investigating crimes" [9, p.171].

It appears that the author A.P. Paţkevici attempted to consolidate certain provisions of this category, drawn from R.S. Belkin and A.F. Volînskii, but overlooked the distinction between criminalistic support—which involves the implementation of a specific system of actions to prepare internal affairs bodies for the detection and investigation of crimes—and criminalistic accompaniment, which is the application of forensic methods, means, and recommendations in the day-to-day practice of detecting and investigating crimes. In this context, a certain analogy can be observed with the tactics of conducting criminal

prosecution actions: preparation is required first, and only then is implementation undertaken.

The foregoing allows the conclusion that the notion of "criminalistic support" encompasses not only scientific and technical aspects, but also legal, organizational, methodological, and tactical dimensions of forensic science and practice. Essentially, it constitutes an activity aimed at the interdependent resolution of issues related to the organization of crime detection and investigation, in the broadest sense of the term. In this context, the subjects of criminalistic support are the individuals with responsibilities directly involved in the detection and investigation of crimes. Primarily, these are the persons conducting criminal prosecution or participating in its execution (criminal investigators, prosecutors, and investigative officers). However, in a broader sense, the creation of conditions for the continuous preparation of law enforcement bodies to utilize forensic methods and means also involves legislative authorities, as well as scientific research institutions and educational establishments [14, pp.60-66].

Consequently, those bodies that establish criminal policy and organize its implementation—from the development of forensic methods, means, and recommendations, to their introduction into criminal prosecution practice, and ultimately to the generalization of the results of their use—play a central role. In this context, forensic science does not act merely as a formal "executor" of legal provisions, but, above all, as the "beneficiary" and "designer" of appropriate methods and means, as well as of the organizational and legal forms for their application in practical activity. In performing these functions, it relies on the results of studying the regularities of the mechanisms and modes of manifestation of criminal activity [21, p.33], on data from the forensic characterization of crimes [24, p.34], and on a synthesis of the practice of investigating crimes and conducting specific criminal prosecution actions [18, pp.22-23].

The purpose and objectives of criminalistic support for the investigation of crimes are presented differently in the scientific literature. Generally, they are considered in relation to creating conditions for the efficient utilization of forensic potential in addressing specific tasks within a particular sphere of law enforcement activity [25, pp.31-33].

Methods and materials applied. The theoretical and methodological foundation of the present research is constituted by a body of concepts, theories, and scientific studies in the fields of forensic science, criminal law, and criminal procedural law, which enable the investigation and analysis of criminalistic support for the investigation of crimes concerning sexual life.

In this context, the research is based on the study of specialized literature, including both classical and contemporary works by forensic scholars. The research methodology relies on a combination of doctrinal analysis, legal and forensic synthesis, and a comparative-analytical approach. This approach has made it possible to identify practices and gaps in the application of forensic methods in the investigation of sexual crimes, as well as to formulate recommendations for optimizing the process of criminalistic support in the forensic investigation of the crimes under study.

In accordance with contemporary approaches in forensic science, the research aims not only at the conceptual and theoretical definition of criminalistic support, but also at identifying practical solutions for optimizing the preparation, application, and development of forensic methods, means, and recommendations in the investigation of sexual crimes. By combining these elements, the theoretical and methodological foundation of the research provides the necessary basis for a systematic analysis of the components of criminalistic support, with a view to evaluating the effectiveness of investigative practice

in cases of crimes concerning sexual life and formulating scientifically grounded, practical recommendations in the targeted field.

Discussion and results obtained. Sexual freedom is an important attribute of human personality and a significant social value. The social danger posed by crimes concerning sexual life consists, first and foremost, in the harm directly inflicted on the victim, whether female or male, considered individually. The violation of sexual freedom creates a state of social insecurity, a particularly dangerous imbalance threatening the very existence of society. For this reason, as author M. Ruiu argues: "the repression of the aforementioned crimes is a necessity, society being interested in creating a framework for the normal conduct of sexual relations" [5, p.141].

According to S. Doraș, "...the issue of combating sexual crimes and ensuring the inviolability of the person's sexual sphere must be perceived and addressed vigilantly, as a primary concern in the context of society's evolution toward a democratic state governed by the rule of law" [1, p.575]. Moreover, in the opinion of M. Gheorghiță, "the diversity of forms in which sexual crimes are committed necessitates operational and in-depth investigations of these crimes, the analysis of data concerning the personality of the victim and of the perpetrator, regarding the nature of the relationships between them as a whole, and the construction of a criminalistic model of sexual assaults" [2, p.187].

The particularities of certain types of crimes, as well as the circumstances, mechanisms, and modes of their commission, naturally determine the specific nature of criminalistic support for their investigation. This is particularly evident in the criminalistic support of the investigation of crimes concerning sexual life—intentional acts established by criminal law that endanger sexual integrity, the normal physical and psychological development of children, the sexual freedom of adults, or the orderly conduct of sexual relations in society [27, p.144; 29, p.18; 26, p.58; 20, p.47; 22, pp.21-22].

Thus, taking into account the approaches existing in doctrine regarding the definition and content of criminalistic support for the investigation of crimes, as well as the particularities of this category of crimes, it is considered appropriate to treat criminalistic support for the investigation of crimes concerning sexual life as "a complex professional activity, based on forensic knowledge, performed by responsible personnel within law enforcement bodies, aimed at creating conditions for their continuous preparation for the efficient use of forensic methods, means, and recommendations in the process of identifying, detecting, and investigating sexual crimes and other sexual assaults associated with serious violations of moral norms governing sexual conduct" [27, p.144; 29, pp.142--144].

In essence, not only is the definition of criminalistic support for the investigation of crimes proposed by A.F. Volînskii shared, but also his approach to structuring this scientific category. According to his view, from a formal-structural perspective, this system essentially reproduces the structure of forensic science itself: the theoretical foundations of criminalistic support, technical-forensic support, tactical-forensic support, and methodological-forensic support. At the same time, he emphasizes that "...the content of these components should not be confused with the content of the corresponding sections of forensic science, as doing so would call into question the delimitation of criminalistic support as a specific type of activity and, simultaneously, as a distinct scientific-applied category" [6, p.25].

Such an opinion is considered acceptable in the theory of criminalistic support for the detection and investigation of crimes and in defining the system of criminalistic support for the investigation of crimes concerning sexual life. It is presented in the form of the following blocks: 1) theoretical foundations of criminalistic support for the investiga-

tion of crimes concerning sexual life; 2) technical-forensic support for the investigation of sexual crimes; 3) tactical-forensic support for the investigation of sexual crimes; and 4) methodological-forensic support for the investigation of crimes concerning sexual life [23, pp.50–51].

Consequently, the content of the system of criminalistic support for the investigation of crimes concerning sexual life consists of legal, organizational, scientific-technical, scientific-methodological, scientific-tactical, and instructional-methodological characteristics relating to the development, implementation, and concrete application of forensic methods, means, and recommendations, aimed at the efficient investigation of crimes within this category. Therefore, it is considered important to pay detailed attention to their content, which is determined on the basis of the tasks that must be addressed in the process of investigating and detecting this type of crime [27, pp.145-148].

The theoretical foundation of criminalistic support for the investigation of crimes constitutes a system of scientific provisions regarding its notion, content, tasks, and functions as a type of activity, the forms of its implementation, as well as its place and role within forensic science [6, p.25]. Within this "foundation", the notion and content of criminalistic support for the investigation of crimes are defined; the theoretical basis of its tasks and functions is established, issues concerning the organization and legal regulation of investigation are identified, and the necessary measures for their resolution are substantiated. The theoretical provisions developed can serve as a basis for the formation of criminalistic support for the investigation of crimes concerning sexual life [23, pp.51-52].

Legal (normative) support primarily represents the legislative regulation of the conditions and procedures for the use of forensic methods, means, and recommendations in the process of detecting and investigating sexual crimes. Legal support holds a priority importance over other elements of criminalistic support, because even the most advanced, scientifically grounded forensic methods, means, and recommendations remain the „property of their developers" if their use is not authorized or if the procedure for their application is not established and regulated by criminal procedural legislation [27, p.145].

Organizational support for the investigation of crimes concerning sexual life represents an essential element of the mechanism for implementing legal provisions regarding the application and use of forensic methods, means, and recommendations in the investigation of these types of crimes. It presupposes a systemic approach to studying the corresponding needs of practice, as well as the scientific-technical and material possibilities for meeting these needs and applying them in practical activity [6, p.28].

Organizational support is manifested primarily in the overall organization of crime investigations and is aimed at creating favorable conditions for this purpose. This includes considerations such as the detection of crimes from fresh traces, the interaction between criminal investigation officers and investigative officers, the planning of criminal prosecution, and related matters [27, p. 146].

It should be emphasized that both legal and organizational support, within the system of criminalistic support for the investigation of sexual crimes, involve addressing tasks that, formally, do not fall within the direct object of forensic science. However, it is generally considered that the role of this science lies in analyzing and studying the practice of applying legal, organizational, scientific-methodological, and other elements of the relevant scientific category, identifying arising problems, their interdependencies, and their influence on the condition and effectiveness of the use of forensic methods, means, and recommendations in the activities of law enforcement bodies concerning the detec-

tion and investigation of this type of crime.

Based on the data obtained, forensic researchers conduct corresponding studies to improve the forensic methods and means in use, develop proposals for addressing existing problems, and initiate their examination within competent bodies and institutions, scientific research centers, and other specialized structures. In this regard, criminalistic support represents a clear example of an innovative approach to solving problems in forensic theory and practice—from the identification of an issue, through its study, to the effective improvement of the practices of criminal prosecution bodies [23, pp.58-59].

Scientific-technical, scientific-tactical, and scientific-methodological support for the investigation of crimes concerning sexual life, within the system of criminalistic support for the detection and investigation of these types of crimes, is characterized primarily by the identification and study of modern achievements in the natural and technical sciences and their adaptation to addressing the tasks of forensic practice. On this basis, existing methods and means are improved, new ones are created, and recommendations are developed regarding their use for the collection, examination, and utilization of evidence. At the same time, forensic techniques—which form the foundation of scientific-technical support [4] and, to a certain extent, also of scientific-methodological and scientific-tactical support—are the most dynamic in their development and, therefore, respond most rapidly to the continuously changing needs of criminal prosecution practice [27, pp.147-148].

This is explained by the fact that, under the influence of scientific and technological progress, the means and methods of committing crimes evolve, thereby compelling forensic researchers to develop increasingly advanced technical tools, often in combination with tactical procedures and recommendations regarding their use for the aforementioned purposes. At the same time, forensic techniques, as an element of the system of criminalistic support, are regarded not only as a category of forensic science and a section thereof, but also as a set of technical means necessary for the application of forensic knowledge and of the skills and abilities acquired through forensic training, aimed at the collection, examination, and utilization of evidentiary information in the process of detecting and investigating sexual crimes [16, p.70].

Within this approach, R.S. Belkin emphasized that "...it is justified to include in this set all technical means that may be used today and in the future by criminal investigation officers, prosecutors, investigative officers, experts, forensic specialists, and other employees of law enforcement bodies" [15, pp.67-68].

At the foundation of scientific-methodological support for the investigation of sexual crimes lies a specific forensic methodology. However, without diminishing its importance, it should be noted that this methodology was developed in the previous century and currently does not fully meet the requirements of modern investigative practice. As a result of the digital transformation of society, offenders have acquired the ability to select potential victims remotely according to their sexual preferences and to commit illicit sexual acts against them. Furthermore, it should be noted that, for the conduct of a qualitative investigation, a criminal investigation officer (or prosecutor) requires knowledge of the methodology for investigating all types of sexual crimes, not just each type individually. This is because investigative practice reveals cases in which offenders commit multiple sexual assaults, beginning with the satisfaction of sexual needs through non-violent means and culminating in acts committed with threats or violence, which naturally necessitates both a distinct evaluation from the perspective of criminal law and knowledge of certain particularities in investigating these acts [23, pp.60-61].

Instructional-methodological support entails the forensic training of criminal investigation officers, prosecutors, investigative officers, experts, forensic specialists, and other subjects involved in investigating crimes concerning sexual life. This training must be aimed at the professional acquisition of forensic methods, means, and recommendations, as well as at the development of practical skills and competencies necessary for the proper investigation of these categories of crimes [27, p.148].

Conclusions and recommendations. The analysis of the notion, content, and system of criminalistic support for the investigation of crimes concerning sexual life reveals that, despite theoretical and normative progress, the current level of criminalistic support does not fully meet the requirements and actual needs of criminal prosecution practice. The complexity of these crimes, the heightened degree of victimization, and the increasingly frequent use of information technologies in committing the targeted crimes necessitate a modern, interdisciplinary, and systemic approach to the investigative process.

It has been observed that the insufficient correlation between scientific achievements in forensic science, criminal law, and criminal procedural law, on the one hand, and the development of information technologies, on the other, negatively affects the efficiency of detecting and investigating sexual crimes. The slow and fragmented development of technical-scientific support, particularly in the IT sphere, leads to difficulties in identifying, recording, and utilizing digital evidence, as well as in documenting criminal activities conducted online.

At the same time, the professional training of subjects involved in the investigation of crimes concerning sexual life—including aspects related to forensic science and technology—is not always adequately adapted to the new forms and methods of committing these crimes. This situation confirms the necessity for the continuous improvement of the system of criminalistic support, as an indispensable element for conducting efficient, objective, and contemporaneously standard-compliant criminal investigations.

In order to optimize criminalistic support for the investigation of crimes concerning sexual life, it is necessary to implement a comprehensive set of theoretical, normative, and practical measures, among which the following are highlighted:

a) Improvement of the criminal procedural normative framework, through the clear and detailed regulation of procedures for obtaining, recording, seizing, and utilizing digital information stored on electronic media or derived from electronic communication networks and Internet resources;

b) Strengthening scientific-technical support for the activities of criminal prosecution bodies, through the development of modern forensic tools and methods aimed at identifying, documenting, and analyzing traces of sexual crimes committed in the digital environment;

c) Establishment and development of an effective mechanism for interdisciplinary collaboration among specialists in information technologies, forensic science, and criminal procedural law, in order to develop unified and coherent solutions for combating sexual crimes;

d) Legislative regulation of the genetic registry of individuals who have committed sexual crimes, with respect for fundamental human rights guarantees, as an additional instrument for the prevention and detection of such acts;

e) Reorganization and enhancement of the professional training and continuous development system for employees of criminal prosecution bodies, by emphasizing practical components and developing competencies in digital forensics and the use of information technologies;

f) Development of specialized criminalistic methodological recommendations, aimed at identifying signs of preparation and commission of sexual crimes, including those occurring in virtual environments and on digital platforms.

Bibliographical references

1. Doraș S. *Criminalistică*. Chișinău: Ed. Cartea Juridică, 2011. 629 p. ISBN 978-9975-53-015-6.
2. Gheorghiță M. *Tratat de metodică criminalistică*. Chișinău: CEP USM, 2015. 532 p. ISBN 978-9975-71-606-2.
3. Gheorghiță M. *Tratat de criminalistică*. Chișinău: F. E.–P. „Tipografia Centrală", 2017. 871 p. ISBN 978-9975-53-834-3.
4. Jitariuc V. *Tehnici și procedee moderne de investigație*. Manual universitar. Chișinău: Ed. Pro Universitaria. Cahul, 2025. 566 p. ISBN 978-9975-88-134-0.
5. Ruiu M. *Metodologia investigării criminalistice a unor genuri de infracțiuni*. București: Ed. Universul Juridic, 2014. 188 p. ISBN 978-606-673-4707.
6. Волынский А. Ф. *Криминалистическое обеспечение раскрытия и расследования преступлений: учебное пособие*. Москва: Московский ун-т МВД России им. В. Я. Кикотя, 2016. 195 с.
7. Коломацкий В.Г. *Криминалистика: учебник*. Москва: Академия управления МВД России, 1994.
8. Кустов А.М. *Механизм преступления и противодействие его расследованию: учебное пособие*. Ставрополь, 1997. 131 с.
9. Пацкевич А.П. *Криминалистическое обеспечение предварительного расследования*. Общая часть: курс лекций. Минск: Акад. МВД, 2011. 170 с. ISBN 978-985-427-634-2.
10. Селиванов Н.А. Криминалистика: система понятий. Москва, 1982. 150 с.
11. Ciopraga A., Iacobuță I. *Criminalistica*. Iași: Ed. Junimea, 2001. 432 p. ISBN 973-37-0589-6.
12. Golubenco Gh., Colodrovschi V. *Asistența tehnico-criminalistică a descoperirii infracțiunilor: Studiu științifico-practic*. Chișinău: ULIM, 2010. 235 p. ISBN 978-9975-78-856.
13. Jitariuc V., Rusu V. *Tratat de criminalistică. Partea a II-a. Tactica criminalistică*. București: Ed. Pro Universitaria, 2025. 1069 p. ISBN 978-606-26-2008-0.
14. *Криминалистика: учебник для студентов вузов*. Под ред. А.Ф. Волынского и В.П. Лаврова. Москва: ЮНИТИ: Закон и право, 2012. 932 с. ISBN 978-5-238-01398-5.
15. *Криминалистическое обеспечение деятельности криминальной милиции и органов предварительного расследования*. Под. ред. Т.В. Аверьяновой и Р.С. Белкина. Москва: Академия управления МВД России, 1997. 398 с. ISBN 5-7858-0003-9.
16. *Криминалистика: в 3 т. Т. 1: История, общие и частные теории*. Под ред. Р.С. Белкина, В.Г. Коломацкого, И.М. Лузгина. Москва: Акад. МВД Рос. Федерации, 1995. 278 с.
17. Лавров В.П. Чегодаева С.С., Демин К.Е. *Криминалистическое обеспечение раскрытия и расследования корыстно-насильственных преступлений: спецкурс лекций для юрид. вузов*. Под ред. В. П. ЛАВРОВА. Москва: ЮНИТИ: Закон и Право, 2003. 126 с. ISBN 5-238-00441-9.
18. Бондарева И.О. *Совершенствование методики расследования преступлений против половой неприкосновенности и половой свободы личности, совершенных несовершеннолетними*: дис. канд. юрид. наук. Тула, 2017. 279 с.
19. Волынский А.Ф. *Концептуальные основы технико-криминалистического обеспе-*

чения раскрытия и расследования преступлений: дис. докт. юрид. наук в форме доклада. Москва, 1999. 65 с.
20. Исаев Н.А. *Системно-криминологическое исследование сексуальных преступлений*: автореф. дис д-ра юрид. наук. Москва, 2007. 58 с.
21. Кустов А.М. *Криминалистическое учение о механизме преступления*: автореф. дис. д-ра юрид. наук. Москва, 1997. 35 с.
22. Маслак С.Н. *Насильственные преступления против половой неприкосновенности и половой свободы личности*: проблемы уголовно-правового регулирования и квалификации: автореф. дис. канд. юрид. наук. Москва, 2013. 27 с.
23. Примаков А.Н. *Криминалистическое обеспечение расследования преступлений против половой неприкосновенности и половой свободы* (*По материалам Республики Беларусь*): Дис. канд. юрид. наук. Москва, 2022. 242 с.
24. Толпекин К.А. *Криминалистическая характеристика преступлений – методологическая основа построения типовых следственных версий (по материалам расследования изнасилований, убийств и преступлений, связанных с незаконным оборотом наркотиков)*: автореф. дис канд. юрид. наук. Москва, 1998. 34 с.
25. Ефремов И.А. *Некоторые вопросы криминалистического обеспечения доказывания по уголовным делам об организованной преступной деятельности.* В: Криминалистическое обеспечение борьбы с преступностью: информационный бюллетень по материалам криминалистических чтений. Москва, 2001, № 13, с. 31-33.
26. Кибальник А. *Судебные подходы к квалификации сексуальных преступлений.* Уголовное право. 2014, № 5, с. 58-60. ISSN 2071-5870.
27. Примаков А. Н. *Криминалистическое обеспечение расследования половых преступлений в Республике Беларусь*. Вестник ТулГУ: Экономические и юридические науки. 2020, Вып. № 3, с. 141-149. ISSN 2071-6184.
28. Шмонин А. В. *Понятие и структура криминалистического обеспечения расследования преступлений.* Труды Академии управления МВД России. 2010, № 1, с. 3-9. ISSN 2072-9391.
29. Яни П. С. *Вопросы квалификации половых преступлений.* Законность. 2013, № 5, с. 16-21. ISSN 0869-4486.
30. Корчагин А.А. *К вопросу о криминалистическом обеспечении предварительного и судебного следствия по делам об умышленных убийствах.* В: Актуальные проблемы расследования преступлений: материалы Всерос. науч. конф. памяти И. Ф. Герасимова, Екатеринбург, 31 янв. 2020 г. Екатеринбург: Уральский гос. юрид. ун-т, 2020, с. 114-122. ISBN 978-5-7845-0632-0.

CZU 343.3:349.442(478) **DOI: https://doi.org/10.5281/zenodo.20828276**

LEGAL AND CRIMINAL LAW DELIMITATION OF THE OFFENCES UNDER ARTICLES 257 AND 257[1] OF CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA: THEORETICAL ASPECTS AND PRACTICAL IMPLICATIONS

Snejana CIOCHINĂ,
PhD Student,
University of European Studies of Moldova
ORCID: 0000-0002-4838-642X

Abstract

The article examines the legal-criminal delimitation of the offences provided for in Article 257 and Article 257[1] of the Criminal Code of the Republic of Moldova, from the perspective of their normative content and the criteria of legal classification applicable in practice. The research is grounded in the interpretation of the legal provisions, highlighting the essential differences between the two offences. Thus, Article 257 concerns acts related to the defective execution of construction works and the non-compliance with technical requirements, conditioned by the occurrence of concrete harmful consequences, whereas Article 257[1] sanctions the violation of construction execution rules in relation to buildings of five or more storeys, where the social danger arises from the very nature and scale of the works carried out in breach of legal norms.

The study identifies clear delimitation criteria, such as the object of regulation, the specific nature of the incriminated conduct, the moment of completion of the offence, and the nature of the harmful result. In conclusion, interpretative benchmarks are outlined to ensure correct legal classification and a uniform practical application of criminal law.

Keywords: criminal liability, defective construction works, legal-criminal delimitation, urban planning and construction.

DELIMITAREA JURIDICO-PENALĂ A INFRACȚIUNILOR PREVĂZUTE LA ART. 257 ȘI ART. 257[1] DIN CODUL PENAL AL REPUBLICII MOLDOVA: ASPECTE TEORETICE ȘU IMPLICAȚII PRACTICE

Abstract

Articolul analizează delimitarea juridico-penală a infracțiunilor prevăzute la art. 257 și art. 257[1] din Codul penal al Republicii Moldova, din perspectiva conținutului normativ și a criteriilor de calificare juridică aplicabile în practică. Demersul este fundamentat pe interpretarea dispozițiilor legale, fiind evidențiate diferențele esențiale dintre cele două incriminări. Astfel, art. 257 vizează faptele de executare necalitativă a construcțiilor și nerespectarea cerințelor tehnice, condiționate de producerea unor consecințe prejudiciabile concrete, în timp ce art. 257[1] sancționează încălcarea regulilor de executare a construcțiilor cu cinci sau mai multe etaje, unde pericolul social rezultă din însăși natura și amploarea lucrărilor realizate cu abatere de la normele legale.

Cercetarea relevă criterii clare de delimitare, precum obiectul reglementării, specificul conduitei incriminate, momentul consumării infracțiunii și natura urmării prejudiciabile. În concluzie, se remarcă repere interpretative menite să asigure o calificare juridică corectă și aplicare practică unitară.

Cuvinte-cheie: construcții necalitative, delimitare juridico-penală, răspundere penală, urbanism și construcții.

Introduction. The construction sector is one of the legal fields characterized by a high degree of regulatory complexity, where the interplay between technical regulations, urban planning requirements, and public safety imperatives gives rise to a multi-layered legal protection framework. In this context, criminal law serves as a last resort, intended to punish acts and conduct that go beyond mere administrative offenses and significantly affect fundamental social values, such as life, personal integrity, construction safety, and real estate assets.

Within the legal system, the Criminal Code of the Republic of Moldova protects these values, primarily through the provisions of Article 257, which establishes criminal liability for the substandard execution of construction works and the commissioning of buildings. This provision establishes a general framework for criminal liability, focused primarily on the final phase of the investment process—namely, the moment the building is put into use and, consequently, when the technical risk materializes.

However, legislative developments and the accelerated pace of urbanization have highlighted the inadequacy of an approach focused exclusively on the final result of construction, particularly with regard to high-rise buildings, which are characterized by a heightened level of structural and social risk. In this regard, through subsequent legislative action, Article 257¹ of the Criminal Code of the Republic of Moldova was enacted as a special provision aimed at the criminal oversight of the entire construction process for buildings with five or more stories, including the design, verification, authorization, execution, and acceptance stages, in accordance with applicable urban planning and technical requirements.

The relationship between the two criminal offenses raises a particularly relevant legal-criminal issue, stemming from the need for a rigorous delimitation of their scope of application. Although both provisions fall within the same substantive domain—construction activity—they differ in terms of the structure of the protected legal object, the material object, the timing of the offense's commission within the investment process, and the scope of the special subject. In the absence of clear criteria for differentiation, the practice of applying the law risks generating divergent classifications or inconsistent interpretations.

In this context, the present study aims to provide a systematic and integrated analysis of the normative content of Articles 257 and 257¹ of the Criminal Code of the Republic of Moldova [1], with reference to the constituent elements of the offenses and their function of criminal-legal protection. The central objective is to identify the criteria for distinguishing between the provisions, as well as to highlight the consequences of this distinction on the legal classification of acts in judicial practice.

The importance of this research stems from the need to ensure interpretive consistency in criminal matters, in a field where errors in classification can have significant consequences both for legal principles and for the effectiveness of the mechanism protecting social values. Consequently, the analysis of the relationship between Articles 257 and 257¹ of the Criminal Code of the Republic of Moldova is not merely a matter of legislative technique, but an essential condition for the uniform and predictable application of criminal law in the field of construction.

Methods and materials used. This scientific study is based on the use of a set of research methods specific to the field of criminal law, adapted to the subject matter of the study, as well as a comparative and delimiting analysis of the provisions of Articles 257 and 257¹ of the Criminal Code of the Republic of Moldova. To this end, the method of criminal-legal analysis was employed, involving an examination of the normative content

of the relevant legal provisions and the identification of the constituent elements of the offenses under analysis. The method of systemic interpretation allowed for the correlation of criminal norms with extra-criminal regulations, particularly with the provisions of the Urban Planning and Construction Code, in order to highlight their complementary nature. Furthermore, the comparative method was used to delineate the scope of application of criminal norms from that of administrative offense norms, and the case study method facilitated the practical illustration of the criteria for legal classification.

The empirical data for this study consists of relevant legislation, such as the Criminal Code of the Republic of Moldova, the Code of Administrative Offenses, and the Urban Planning and Construction Code, as well as key scholarly works in the field and national judicial practice, which were used to validate the theoretical conclusions drawn.

Discussions and results obtained. A criminal-law analysis of the provisions of Articles 257 and 257[1] of the Criminal Code of the Republic of Moldova, conducted through the lens of defining the normative content and constituent elements, highlights the existence of a complex legislative framework based on the concept of differentiated protection of social relations in the construction sector. This protection is structured progressively, depending on the nature of the violated obligations, the timing of the unlawful conduct within the investment cycle, and the severity of the resulting consequences, which gives the analyzed provisions systemic coherence and distinct applicability in practice.

In this context, Article 257 of the Criminal Code of the Republic of Moldova serves as a general provision governing criminal liability for failure to comply with quality requirements in construction. An analysis of paragraph (1) reveals that the ***specific legal object consists*** of social relations concerning the compliance of construction projects put into use with quality requirements, which places this provision within the sphere of protecting interests related to the safety, functionality, and reliability of construction projects [2, p.633]. The material object is defined broadly, encompassing both residential buildings and industrial facilities or those in strategic sectors such as transportation and energy, without any express limitation based on size or height. The essential condition is that they be substandard, unfinished, or non-compliant with the design, which highlights the technical and regulatory nature of the violation [2, p.634].

The victim of the offense is typically the construction investor, which reflects the financial and contractual nature of the protected relationships. At the same time, this framework does not preclude the existence of indirect victims, in cases where non-compliance creates risks for users or third parties [3, p.144].

In this regard, the Urban Planning and Construction Code of the Republic of Moldova defines the term “investor” as follows: a natural or legal person who finances and, where applicable, carries out the construction of a new building or modifications to an existing building, within the meaning of this Code [4].

The objective element of the offense provided for in paragraph (1) of Article 257 of the Criminal Code of the Republic of Moldova consists in the act of putting non-compliant structures into use, which gives the offense a formal character. The offense is completed at the moment the building is put into use, regardless of whether any harmful consequences occur, which underscores the preventive nature of the provision [2, p. 635]. The subjective aspect is characterized by direct intent, and the motive for the offense is frequently negligence in fulfilling professional obligations, which indicates culpability specific to the construction sector, where technical requirements are particularly high.

The subject of the offense is specific, consisting of responsible individuals or legal entities (with the exception of public authorities) who perform duties in the construction

sector, such as: *heads of construction organizations, site managers, or persons responsible for quality control.* This limitation of the specific subject reflects the necessity of holding a functional position that allows for direct influence over the quality of construction. Thus, "site manager" refers to the natural person designated by the contractor to oversee the execution of construction work and ensure its completion in accordance with the project [5, p.67].

Furthermore, paragraph (2) of Article 257 of the Criminal Code of the Republic of Moldova introduces a distinct criminal offense, the *legal object* of which is the social relations concerning the prevention of the continuation of works that have been improperly executed and halted by inspection authorities [2, p. 637]. This provision addresses a different stage of the investment process, namely the phase of intervention by the regulatory authorities, and penalizes the conduct of disregarding the orders issued by them. *The material object* consists of non-compliant construction works, and the objective aspect consists of the act of continuing such works despite the prohibition.

This criminal offense has particular legal significance, as it is not limited to penalizing technical non-compliance but also aims to protect the authority and control mechanisms in the construction sector, thereby strengthening discipline in this field. The subject is, in this case as well, specific, being the person responsible for halting the works and for enforcing the requirements, which implies a pre-existing legal obligation to comply.

The aggravated forms provided for in paragraph (3) of Article 257 of the Criminal Code of the Republic of Moldova reflect an extension of criminal protection depending on the severity of the consequences. Consequently, the legislature distinguishes between several forms of the offense, in accordance with the following provisions:

- *In the case of subparagraph (a) of paragraph (3) of Article 257* CC RM, the specific legal object is complex in nature, encompassing both social relations concerning the safety, strength, and stability of structures, as well as those concerning a person's health and physical integrity. The material object is also complex, comprising both the structure and the person's body. The harmful consequence consists of serious injury to health or loss of working capacity, and the offense is of a material nature, with its commission occurring upon the occurrence of the result;
- *In the case of subparagraph (b) of paragraph (3) of Article 257* CC RM, the emphasis is on the protection of the integrity of the building, the harmful consequence consisting of its total or partial destruction, while subparagraph (c) extends protection to important facilities and equipment;
- *In the case of subparagraph (d) of paragraph (3) of Article 257* CC RM, it introduces the criterion of substantial damage, highlighting the financial dimension of criminal liability [2, pp.640-648].

In all these scenarios, the objective aspect involves a combination of actions (design, inspection, assessment, construction, or modification) and omissions (failure to comply with technical standards), and it is necessary to establish a causal link between the act and the result. The subjective aspect is mixed, characterized by direct intent regarding the act and negligence regarding the consequences, which reflects the specific nature of professional negligence in the construction sector.

With regard to the offense provided for in para. (4) of Art. 257 of the Criminal Code of the Republic of Moldova, which constitutes the most serious aggravated form of the offense, namely where the act results in the death of a person. In this scenario, the legal object takes on a complex nature, encompassing social relations pertaining to the person's life, and the offense is a material one, with its commission occurring upon the death

of the person.

In analyzing the constituent elements of the offense specified in Article 257 of the Criminal Code of the Republic of Moldova, it is important to refer to the relevant provisions of the Urban Planning and Construction Code of the Republic of Moldova (CUC) [4], which detail the powers, obligations, and nature of each specific element of the offense, as follows:

- Designer – Art. 55–57; Art. 119–127; Art. 133–136, etc., CUC RM;
- Project reviewer – Art. 129, 132, 171, etc., CUC RM;
- Certified technical expert – Art. 136, Art. 150, Art. 182–186, Art. 204, etc., CUC RM;
- Construction site manager – Art. 168–171, Art. 180–186, etc., CUC RM.

Accordingly, this law governs the conduct, activities, responsibilities, rights, and obligations of certified professionals involved in the authorization, execution of design and construction works, post-construction use of buildings, quality assurance of buildings, construction materials, and products, and the exercise of state control over compliance with regulations in land use planning and urban planning, as well as the authorization regime for construction.

In contrast, Article 257¹ of the Criminal Code of the Republic of Moldova establishes a special provision, introduced in the context of legislative developments through the Draft Law on Amending the Criminal Code of the Republic of Moldova No.985 of April 18, 2002. This provision reflects the need to adapt the criminal framework to contemporary urban realities, characterized by the development of high-rise and complex buildings [6].

Legal scholars Stati V. and Brînza S. point out, in their analysis of the provisions of Article 257¹ of the Criminal Code of the Republic of Moldova, that the criminalization of the improper execution of construction works in the case of buildings with a height exceeding five stories responds to a pressing social need, generated by the proliferation of violations in this area and the increased risks to public safety. The authors emphasize the systemic nature of the provision, which is integrated into the broader context of recent legislative reforms in the field of urban planning and construction, as well as its role in holding all parties involved in the investment process accountable—from design through to project acceptance. At the same time, it is argued that the legal provision does not constitute excessive criminalization; on the contrary, it is distinguished by a clear demarcation from other forms of legal liability, being characterized by its specific subject matter, the complex nature of the act, and the special status of the subject, which confirms its nature as a special criminal provision intended to protect social relations in the highly hazardous field of construction [7, pp.12-18].

Against this doctrinal backdrop, it is only natural to proceed to an in-depth analysis of the criminal law aspects of the offense provided for in Article 257¹ of the Criminal Code of the Republic of Moldova, with a view to rigorously defining its constituent elements and the characteristics that distinguish it within the criminal law system.

Consequently, the specific legal object of the offense provided for in Article 257¹ of the Criminal Code of the Republic of Moldova consists of the social relations regarding the compliance of the processes of design, verification, expert assessment, authorization, execution, and acceptance of buildings with five or more stories, in relation to construction regulations, urban planning documentation, and the requirements established by the urban planning certificate and the building permit [2, p.652]. This formulation highlights the complex and multidimensional nature of the provision, which goes beyond the strictly technical sphere and incorporates urban planning requirements.

The scope of the offense is limited to buildings with five or more stories, which in-

dicates a clear legislative choice to subject buildings with a major urban impact to a more stringent criminal regime. The objective aspect consists of a range of acts and omissions that cover the entire operational chain of the construction process, from design to final acceptance.

Consequently, the applicability of Article 257[1] of the Criminal Code of the Republic of Moldova is contingent upon the specific nature of the legal requirements violated, such that this provision cannot apply in cases where the offenses committed by the perpetrator concern indicators other than those expressly provided for by the legislature, namely: height restrictions, street alignment, standardized population density indices, and the regulatory distance between buildings. In such situations, depending on the circumstances of the act and its severity, the legal classification is to be determined by reference to other criminal provisions, such as Articles 223, 228, or 257 of the Criminal Code, or to the relevant provisions of the Code of Administrative Offenses, including subparagraphs (f) or (g) of paragraph (1) of Art. 93; Art. 94; para. (2) of Art. 109; para. (2) and (3) of Art. 113; para. (2) of Art. 115; para. (10) of Art. 119; Art. 134[1]; Art. 144; para. (4) of Art. 155[1]; Art. 172; Art. 177; Art. 179, and other applicable provisions [8].

Thus, we provide an example from judicial practice where the facts do not constitute criminal offenses but meet the criteria for an administrative offense as follows: *On July 11, 2024, at approximately 8:20 a.m., the chief specialist at the Trușeni City Hall was informed by a resident of the village of Dumbrava, Trușeni commune, The resident reported that the owner of the property with cadastral number 000.777.888, located in Trușeni IP, lot no. 4, with an area of 0.0226 ha, had begun constructing a house without the necessary permits, without a building permit, and without complying with legal requirements at the initial stage of construction. These facts were subsequently established in the report on the administrative violation CB 003013 dated August 20, 2024, and the investigating officer from the Trușeni Commune City Hall, G.S., found that G.A., on the private land with cadastral number 000. 777.888, located in IP Trușeni, lot no. 4, had commenced and carried out the construction of a vacation cottage without a building permit, including two sewer lines, on public land within the safety zone. Furthermore, to establish the existence of the alleged violation attributed to G.A. and to determine his guilt, the investigating officer examined the following documents and evidence: Report No. CB 003013 dated August 20, 2024; the purchase and sale agreement; extract from the Real Estate Registry; photographic record of the construction site; Order No. 959 of August 13, 2024, pursuant to which G.A. is required to demolish the structures and restore the site to its original condition; minutes of the hearing of witness M.A., according to which the latter stated that on August 13, 2024, G.A. was issued an order to demolish the structures and restore the site to its original condition, a requirement with which the latter has not complied and continues to carry out construction despite its illegality; minutes of the hearing of witness G.S., according to which the latter stated that upon visiting the site, he found that G.A. had constructed, on public land and without the necessary permits, three cesspools for the collection of wastewater within the road safety and protection zone. Thus, based on the totality of the evidence in the administrative offense case presented and examined during the court hearing, the court finds that the acts committed by G.A. satisfy the elements of the offense provided for in Article 179 of the Code of Administrative Offenses, namely the performance of construction work without a permit* [9].

The example from judicial practice cited above clearly confirms the criterion for distinguishing between the scope of application of Article 257[1] of the Criminal Code of the Republic of Moldova and that of the administrative offense provisions, in particular Article 179 of the Code of Administrative Offenses. Therefore, although the conduct of the

perpetrator G.A. constitutes a clear violation of the legal regime governing construction permits, consisting of the construction of a building without a permit, as well as "*the performance of related works (sewer lines) on public land and in protected areas, it does not meet the conditions for criminal liability set forth in Article 257¹ of the Criminal Code of the Republic of Moldova*". However, the case materials do not indicate a violation of the specific and restrictive criteria set forth in this provision, such as: height regulations, street alignment, standard density, or distances between buildings, but rather exclusively a failure to comply with the permitting regime, which correctly gives rise to administrative liability.

Consequently, the legal classification made by the court pursuant to Article 179 of the Code of Administrative Offenses appears to be in accordance with the principle of legality in criminal law, thereby avoiding an unjustified expansion of the scope of criminal liability. This solution also reflects the need for a restrictive interpretation of criminal law provisions, in accordance with their nature as a last resort, reserved exclusively for acts that pose a high degree of social danger and that fall precisely within the legal definition.

From this perspective, by correlating the analysis of the case with the legal nature of the offense, it can be observed that the mere performance of the works without authorization, in the absence of harmful consequences or a violation of essential urban planning indicators, is not sufficient to attract criminal liability under Art. 257¹ of Criminal Code of the Republic of Moldova. In its standard form, this offense is formal in nature, with completion occurring at the moment the act is committed, without the need for a harmful consequence to occur. However, in the scenario described in paragraph (3), when the act causes serious injury or the death of a person, the offense takes on a material character, approaching, in this respect, the aggravated forms provided for in Article 257 of the Criminal Code, which highlights an escalation of legal liability depending on the severity of the resulting harm.

A key distinguishing feature is paragraph (2) of Article 257¹ CC RM, which introduces an aggravating circumstance based on the commission of the offense in protected areas, reflecting the expansion of the scope of protected social values to include the environment and built heritage. The scope of the offense is defined even more broadly than in Article 257 CC RM, including, in addition to construction professionals, the issuer of the building permit, the contractor, and the investor, which reflects a broader distribution of criminal liability [2, pp.655-656].

Therefore, the legal and criminal distinction between Articles 257 and 257¹ of the Criminal Code of the Republic of Moldova is made by reference to the material object, the nature of the obligations violated, the time of the offense, and the scope of the specific subjects. In this regard, Article 257 is a general provision aimed at ensuring construction quality and penalizing various harmful consequences, while Article 257¹ is a special provision with a pronounced preventive character, focused on urban planning compliance and the control of high-rise buildings. In our view, this distinction is essential for the correct legal classification of the facts and for the consistent application of criminal law in the field of construction.

Last but not least, it must be emphasized that the application of the criminal provisions under review cannot be carried out in isolation, but requires indispensable coordination with the provisions of the Urban Planning and Construction Code of the Republic of Moldova, which constitutes the primary regulatory framework governing the design, authorization, construction, and acceptance of buildings. Thus, the offenses provided for in Articles 257 and 257¹ of the Criminal Code implicitly refer to special technical and legal

regulations, as their typical content is determined by the violation of obligations established in non-criminal legislation. In this regard, the Urban Planning and Construction Code establish standards of legality and quality, while criminal law serves as a sanctioning instrument in the event of their violation, thereby reinforcing the subsidiary and complementary nature of criminal law.

At the same time, from the perspective of legal classification, it is clear that a rigorous analysis of the constituent elements of the offense is essential to ensure that the facts are correctly classified. However, criminal liability can be established only to the extent that the typical conditions set forth in criminal law are cumulatively met; otherwise, other forms of legal liability apply. In this context, the principle of legality requires avoiding the unjustified expansion of criminal liability, necessitating a strict distinction between the criminal and administrative spheres. Finally, in the event that the act does not meet the constituent elements of a crime, it must be correctly classified within the scope of administrative liability, in accordance with the provisions of the Code of Administrative Offenses. This solution reflects the application of the principle of proportionality and the principle that criminal law is a last resort, ensuring a legal response commensurate with the degree of social danger posed by the act and avoiding the unjustified overlap of forms of liability.

Conclusions. The criminal law analysis of the provisions of Articles 257 and 257¹ of the Criminal Code of the Republic of Moldova highlights the existence of a coherent regulatory framework, structured around distinctions in liability based on the nature of the obligations violated, the stage of the investment process at which the unlawful conduct occurs, and the severity of the resulting consequences. From this perspective, Article 257 CC RM emerges as a general provision, aimed at protecting construction quality standards and sanctioning various harmful outcomes, whereas Article 257¹ CC RM constitutes a special provision with a predominantly preventive function, intended to ensure urban planning compliance in the case of high-impact construction projects. The distinction between the two provisions is made by reference to the subject matter, the content of the legal obligations violated, and the scope of the active subjects, which allows for the avoidance of overlaps and ensures uniform application in practice. At the same time, it has been found that the application of criminal provisions is contingent upon their alignment with non-criminal legislation, particularly the Urban Planning and Construction Code of the Republic of Moldova, which defines the technical and legal standards whose violation gives rise to criminal liability. Furthermore, this analysis does not exhaust all the difficulties in interpreting the provisions, and an in-depth study of the evolving judicial practice is necessary.

A key finding of this research is the need to uphold the principle of legality, given that criminal liability can only arise if all the constituent elements of the offense are cumulatively met. In the absence of these elements, the acts should fall under the scope of administrative liability, which ensures the proportionality of the legal response and prevents excessive criminalization. Therefore, we believe that the evolution of the regulatory framework in this area should be oriented toward an explicit clarification of the criteria for distinguishing between criminal and administrative liability, with a view to ensuring a uniform and predictable legal practice.

In conclusion, the provisions analyzed reflect a modern legislative approach adapted to the realities of the construction sector; however, their effective application depends on a rigorous interpretation and clear distinction between the various forms of legal liability, in order to guarantee the legality of legal relationships and the effective protection

of the social values being safeguarded.

Bibliographical references

1. Criminal Code of the Republic of Moldova, No.985/2002. In: Official Gazette of the Republic of Moldova, No.128-129/1012 of September 13, 2002.
2. Stati V. *Economic Crimes. Monograph*. USM, Faculty of Law, Central Printing House, Chișinău, 2024, ISBN 978-5-88554-363-7, pp.633-656.
3. Stati V. *Crimes Related to Construction and the Management of the Housing Stock* (*Articles 257 and 258 of the Criminal Code of the Republic of Moldova*): *Clarification of Certain Concepts*, In: Journal Studia Universitatis Moldavie, 2014, No.8(78), "Social Sciences" Series, ISSN 1814-3199, pp.142-158.
4. Urban Planning and Construction Code of the Republic of Moldova No.434 of December 28, 2023. In: Official Gazette No.41-44, Art. 61, of January 30, 2024.
5. Ciochină S. *The Offense of Substandard Construction* (*Art. 257 of the Criminal Code of the Republic of Moldova*): *A Legal Analysis of National Legislation and Comparative Criminal Law in Light of European Legal Provisions*. In: Promotion of Social and Economic Values in the Context of European Integration: Young Researchers, 5th Edition, of December 2-3, 2022, Chișinău, Republic of Moldova: 2022, 5th Edition, TC, pp.66-72. ISBN 978-9975-3527-9-6.
6. Draft Law Amending the Criminal Code of the Republic of Moldova No.985 of April 18, 2002. Available: https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6539/language/ro-RO/Default.aspx (accessed April 1, 2026).
7. Brînza S., Stati V. *Summary of the most important amendments made by Law* No.136/2024 *to the provisions on economic crimes*. In: Integration through Research and Innovation: Legal and Economic Sciences, of November 7-8, 2024, Chișinău, Republic of Moldova: Publishing and Printing Center of the State University of Moldova, 2024, SJE, pp.12-18. ISBN 978-9975-62-798-6.
8. The Code of Administrative Offenses of the Republic of Moldova, No.218/2008. In: Official Gazette of the Republic of Moldova, No.78–84/195–197 of April 21, 2009.
9. Decision of the Chișinău District Court (Buiucani Branch) of December 25, 2025. Case No.42038/2024. Available: https://jc.instante.justice.md/ro/pigd_integration/pdf/M2M1YWJlMzctMTdhZS00OTMwLWFlMTUtMDMwMDE3NzliYzhl (accessed April 4, 2026).

CZU: 343.96:[612.43+612.8] DOI: https://doi.org/10.5281/zenodo.20828359

VIOLENCE FROM THE NEUROPSYCHOENDOCRINE AND IMMUNOPHYSIOLOGICAL PERSPECTIVE

Mariana Irina MAGIRESCU CERNAT,
PhD Candidate,
"Ştefan cel Mare" Academy of Ministry of Internal Affairs,
Criminologist,
Università Internazionale di Studi Sociali – UNINTESS,
Mantova, Italia
ORCID: 0009-0003-0406-2137

Abstract

The objective of this study is to analyze the interaction between neuropsychoendocrine and immunophysiological vulnerability and environmental factors in the genesis of violent behavior, in order to optimize risk assessment and the prevention of violent crime.

Research data indicate that prefrontal cortex dysfunction, amygdala hyperactivity, HPA axis imbalance, chronic neuroinflammation, and autonomic nervous system hyporeactivity correlate with impulsivity, emotional regulation deficits, and violent recidivism. The analysis highlights the differentiation of the biological profile between reactive and instrumental violence. Biological vulnerability increases the likelihood of intense emotional activation, but a deficit in regulation turns that activation into aggressive action.

The results support the need for an integrated, multi-level approach in the assessment of perpetrators of violent offenses. Knowledge of the individual psycho-neuro-physiological profile allows for anticipating moments of imbalance and for grounding preventive interventions. The most modifiable target of prevention is the development of emotional regulation skills.

The central proposal is to develop neurophysiological screening protocols applicable during the assessment phase, combined with self-regulation and frustration tolerance programs run by specialized associations. In cases with suspicion of pseudopsychopathy and a documented history of prefrontal lesions, the use of neuroimaging is justified as an auxiliary tool in assessing criminal responsibility.

Keywords: neuropsychoendocrinology, immunophysiology, violent behavior, criminality, HPA axis, hormone levels, prefrontal cortex, emotional regulation deficit.

VIOLENȚA DIN PERSPECTIVA NEUROPSIHOENDOCRINĂ ȘI FIZIOLOGICĂ

Abstract

Obiectivul acestui studiu este de a analiza interacțiunea dintre vulnerabilitatea neuropsihoendocrină și imunofiziologică și factorii de mediu în geneza comportamentului violent, în vederea optimizării evaluării riscului și a prevenirii criminalității violente.

Datele de cercetare indică faptul că disfuncțiile cortexului prefrontal, hiperactivitatea amigdalei, dezechilibrul axei HPA, neuroinflamația cronică și hiporeactivitatea sistemului nervos autonom se corelează cu impulsivitatea, deficitele de reglare emoțională și recidiva violentă. Analiza evidențiază diferențierea profilului biologic între violența reactivă și cea instrumentală. Vulnerabilitatea biologică crește probabilitatea unei activări emoționale intense, însă un deficit de reglare transformă această activare în comportament agresiv.

Rezultatele susțin necesitatea unei abordări integrate, multi-nivel, în evaluarea autorilor infracțiunilor violente. Cunoașterea profilului psiho-neuro-fiziologic individual permite anticiparea momentelor de dezechilibru și fundamentarea intervențiilor preventive. Cel mai modificabil obiectiv al prevenirii este dezvoltarea abilităților de reglare emoțională.

Propunerea centrală este dezvoltarea unor protocoale de screening neurofiziologic aplicabile în etapa de evaluare, combinate cu programe de autoreglare și toleranță la frustrare implementate de asociații specializate. În cazurile în care există suspiciuni de pseudopsihopatie și un istoric documentat de leziuni prefrontale, utili-

zarea neuroimagisticii este justificată ca instrument auxiliar în evaluarea responsabilității penale.

Cuvinte-cheie: neuropsihoendocrinologie, imunofiziologie, comportament violent, criminalitate, axa HPA, nivel hormonal, cortex prefrontal, deficit de reglare emoțională.

Introduction. Violent criminality constitutes a multifactorial phenomenon that cannot be explained exclusively through socio-legal approaches but requires an integrated analysis of factors ranging from the neural level to the endocrine and immunophysiological levels. In the contemporary approach, criminology and criminal law must examine violent behavior from a biosocial perspective through integrative models. Aggressive behavior results from the continuous interaction between brain structures, psychological processes, hormonal profiles, and immunophysiological reactivity, all of which are modulated by environmental factors and criminal opportunities.

From a criminological perspective, this model does not replace the analysis of social factors but complements it, providing a nuanced understanding of the differences between individuals and their distinct reactions to the same risk factors.

The relevance of this approach in criminal investigation and judicial proceedings lies in its capacity to clarify and individualize the fundamental distinction between pathological violence, reactive aggression (impulsive and emotional), instrumental violence (premeditated and goal-oriented), and acquired pseudopsychopathy.

The latter refers to an alteration of social cognition and behavioral control resulting from brain injuries, typically affecting the orbitofrontal or temporal regions, while the individual's general intellectual functioning remains preserved. Lesions of the prefrontal cortex—the brain region responsible for self-control—have been associated in the scientific literature with disinhibition syndrome, characterized by impulsive and poorly regulated behavior.

Each of these typologies is associated with distinct neurobiological patterns, carrying direct implications for the assessment of recidivism risk. This perspective requires the personalization of preventive interventions and the scientific substantiation of judicial decisions.

Depending on the circumstances of each case, sentencing should be individualized through the recognition of mitigating or aggravating factors, exemption from criminal liability where the offender lacked criminal responsibility at the time of the offense, or where responsibility was significantly impaired by structural neural abnormalities. Appropriate social and medical measures should also be implemented according to the specific disorder involved, ensuring a fair and well-founded application of the law.

Pathological cases are generally easier to identify and require medical certification in order to exclude criminal liability and impose security measures of a medical nature. Such cases are associated with delusional disorders and psychotic illnesses, where aggressive acts are driven by persecutory delusions or command hallucinations rather than criminal intent or an antisocial personality structure. These situations fall primarily within the domain of clinical psychopathology.

Defining violent criminality through behavioral typologies makes it possible to move beyond a purely descriptive legal framework. The integration of multidisciplinary data becomes essential in transitioning from an explanatory criminology to an empirical criminology grounded in observational evidence derived from scientific research.

According to contemporary criminological theory, biological vulnerability should not be regarded as a deterministic cause of criminal behavior but rather as a factor that influences an individual's threshold for frustration, chronic stress, and social pressure.

Advances in neuroscience, psychophysiology, and behavioral genetics over recent decades have demonstrated that "the biological substrate plays a significant role in the etiology of violence" [1], without negating the multifactorial nature of violent behavior or the individual's capacity for self-regulation.

The multilevel approach integrates social factors into a more complex causal framework, emphasizing that biology establishes probabilities, psychology mediates decision-making, and the environment activates vulnerability.

Thus, "biological factors constitute a predisposition which, in interaction with environmental stressors, increases the likelihood of violent behavior" [2].

The aim of this paper is to synthesize the existing evidence regarding these levels of analysis, highlighting how they converge in the profiles of individuals exhibiting violent behavior, while also proposing new methods of prevention.

Research methodology. The methodology employed is an integrative review of the scientific literature. International databases were consulted, covering the period from 1990 to the present, with priority given to meta-analyses, longitudinal studies, psychophysiological research, and neuroimaging studies (fMRI, PET). The analysis focused on the comparative synthesis of data regarding the association between biological markers (neural, neurochemical, hormonal, and autonomic) and different typologies of violence within the framework of behavioral disorders.

This approach allows for a transition from a general description of the phenomenon to a functional differentiation of the mechanisms involved in the manifestation of violent behavior.

Discussions and results obtained. I. Neurobiological Level. The activity and structure of the prefrontal cortex, the limbic system, and particularly the amygdala have a major, and sometimes exclusive, impact on the transition to violent behavior, as occurs in acquired pseudopsychopathy, where neural circuits no longer permit adequate deliberation before action.

Research in neuroscience has highlighted the decisive role of the prefrontal cortex in impulse inhibition and moral judgment.

A concrete contribution is made by the involvement of the entire limbic system (the amygdala, hippocampus, hypothalamus, cingulate gyrus, nucleus accumbens, insular cortex, and thalamus), as, in the presence of a stimulus perceived as threatening, provocative, or frustrating, the amygdala initiates the emotional response by activating the hypothalamus, which mediates the autonomic fight-or-flight reaction. The hippocampus contextualizes the stimulus by relating it to affective memory; the anterior cingulate gyrus processes emotional conflict and modulates attention; the insular cortex integrates visceral signals associated with the conscious awareness of fear; and the nucleus accumbens may facilitate impulsive responses through the evaluation of motivational salience.

The amygdala mediates threat detection and fear conditioning. Studies have found that individuals displaying instrumental aggression and psychopathic traits exhibit amygdala hypoactivity.

Emotional impulses are generated by subcortical structures, while the prefrontal cortex (PFC) primarily serves an inhibitory control function over them.

In particular, the orbitofrontal and ventromedial regions of the prefrontal cortex perform the "essential inhibitory control function over emotional impulses" [3].

Instrumental violence, characteristic of psychopathy, reflects a chronic insensitivity to stress. Low basal cortisol levels and attenuated physiological reactivity indicate a congenital or acquired hyporeactivity to fear. This neurobiological deficit reduces the deterrent value of punishment and facilitates persistent and calculated antisocial behavior.

"Neuroimaging studies have demonstrated reductions in prefrontal volume among violent recidivist offenders" [4], while amygdala hypoactivity "explains insensitivity to punishment" [5].

Consistent reductions in gray matter volume have been observed in the prefrontal cortex, amygdala, and hippocampus of violent individuals. Moreover, prefrontal hypoactivation during moral reasoning has been found to be functionally associated with the frequency of aggressive behavior.

Reactive aggressors exhibit amygdala hyperactivation, consistent with the hostile attribution bias observed when interpreting ambiguous stimuli. Etiologically, this pattern is associated with a history of trauma or early-life adversity. It is characterized by elevated basal cortisol levels and an exaggerated response to social stressors. This phenotype reflects hypervigilance within the brain's threat-detection system and correlates with hyperactivity of the hypothalamic-pituitary-adrenal (HPA) axis.

Accordingly, an individual's capacity for effective emotional regulation depends on the functional connectivity between the prefrontal cortex and the amygdala; "dysfunction within this circuit significantly increases the risk of aggressive escalation" [6].

Of particular relevance to criminology is the finding that structural or functional deficits of the prefrontal cortex, especially within the ventromedial and orbitofrontal regions, compromise higher-order regulatory processes and inhibitory control over limbic structures. Under such conditions, the threshold for behavioral activation decreases and the likelihood of impulsive aggressive acts increases, particularly in situations involving provocation, stress, or intoxication.

The prefrontal cortex does not generate either prosocial or antisocial behavior; rather, it serves an inhibitory control function over subcortical impulses. When this inhibitory brake is impaired, whether structurally or functionally, the threshold for violent action is substantially lowered and the risk of violent behavior increases.

Functional and structural neuroimaging studies have identified deficits preferentially localized within the ventromedial prefrontal cortex, a region critical for integrating emotional signals originating from the amygdala with cognitive representations of future consequences. When connectivity with the amygdala is disrupted, individuals may experience aggressive impulses without being able to adequately anticipate their consequences, resulting in a direct transition from impulse to action with diminished inhibitory control.

Within a criminological framework, acquired sociopathy, also referred to as pseudopsychopathy, must also be considered. This condition involves an alteration of social cognition and inhibitory control resulting from structural damage to ventromedial prefrontal networks, while general intellectual functioning remains preserved.

From the case of Phineas Gage in 1848 to the present day, numerous such cases have been documented. Prefrontal dysfunction manifests through social disinhibition, impulsivity, reduced empathy, and impaired decision-making based on future consequences, despite the preservation of general cognitive abilities. These individuals understand social norms; therefore, the deficit is not one of ignorance but of behavioral implementation. They know how they should act, yet often experience a diminished capacity to inhibit inappropriate behavior. This distinction is crucial for understanding the limitations of purely educational interventions among populations with prefrontal dysfunction. It also supports the development of legal procedures that allow defendants to present evidence regarding their specific neurobiological circumstances and enable courts to assess aggravating and mitigating factors, while considering socially integrative measures rather than exclusively punitive sanctions where appropriate.

From a criminal law perspective, the prosecution of violent individuals within this

category requires rigorous individualization of the factual circumstances. The identification of a neurobiological dysfunction does not fall within the competence of law enforcement authorities; however, investigators are responsible for documenting the concrete characteristics of the violent act. Such findings may provide a basis for requests by the defense, the prosecution, or the court to order structural and functional neuroimaging assessments.

The amygdala and the prefrontal cortex are connected through bidirectional pathways. Under normal conditions, the prefrontal cortex regulates amygdala activity and contributes to a realistic assessment of potential threats. In reactive aggression, this regulatory control becomes impaired and the amygdala assumes dominance, a process commonly referred to as an "amygdala hijack".

Therefore, the amygdala and the broader limbic system do not independently generate violent behavior. Rather, they provide its emotional and motivational components. Whether a response becomes defensive or offensive depends on the integrity of prefrontal regulatory control and on the individual's prior experiences.

II. Psychological Level. At the psychological level, traits such as high impulsivity, low empathy, and deficits in emotional regulation consistently correlate with:

- *Violent antecedents*, which highlight vulnerability factors that contributed to the criminal history, in both reactive and instrumental violence;
- *Unexpected aggressive manifestations in certain situations*, which explain disproportionate and unplanned reactions in cases of reactive violence;
- *Increased risk of future violent reactions*, which supports the predictive value of the profile in assessing recidivism risk, for both reactive acts and goal-directed instrumental acts.

These traits function as mediators between external stimuli and violent behavior. Rigid cognitive schemas distort the interpretation of social situations, while lack of affective empathy reduces moral inhibition and the capacity to resonate with the suffering inflicted on the victim by the perpetrator.

When emotional regulation is deficient, frustration is no longer managed cognitively, and psychological tension is transformed into violent motor discharges. These are perceived by the subject as the only means of release, as a response to fear, often unmotivated, triggered by stimuli perceived as psychological or physical threat.

III. Endocrinological Level. At the endocrinological level, violent behavior can be analyzed through the hypothalamic-pituitary-adrenal axis - HPA, a hormonal system that modulates the threshold of aggressive reactivity and the response to perceived threat.

3.1. The Hypothalamic-Pituitary-Adrenal Axis as a System for Modulating Reactivity and its Role in Violence Typologies. The HPA axis represents the main neuroendocrine system involved in regulating the stress response. The function of this axis does not consist of directly determining violent behavior, but of modulating the threshold of reactivity to threatening stimuli and sensitivity to aversive consequences.

Activation of the HPA axis initiates a sequential hormonal cascade: the hypothalamic paraventricular nuclei secrete corticotropin-releasing hormone – CRH, which stimulates the anterior pituitary to release adrenocorticotropic hormone – ACTH, and ACTH determines cortisol secretion at the level of the adrenal cortex. Cortisol exerts effects on neuronal excitability and on limbic circuits involved in threat processing, thus contributing to the calibration of the behavioral response.

3.2. Differential Neuroendocrine Profiles of Violence. Depending on the type of violence manifested, the activity profile of the HPA axis shows clear differentiations.

Reactive violence correlates with HPA axis hyperactivity and with elevated basal

cortisol levels. This profile reflects hypersensitivity to perceived threat and reduced capacity for emotional regulation, correlated with a low threshold of frustration tolerance. From a behavioral perspective, violence appears impulsive, as an immediate response to anger or fear, in the context of prefrontal control being overwhelmed by amygdalar hyperactivity. The violent act is defensive or punitive, without prior planning. The neurobiological basis consists of emotional regulation dysfunction.

Instrumental/psychopathic violence is associated with chronic HPA axis hypoactivity and with low resting heart rate. These markers indicate reduced sensitivity to stress and a deficit in behavioral inhibition. Violence becomes calculated and is used as a means to achieve an external goal: material, status, or control. The act is carried out with affective detachment and prior planning, facilitated by insensitivity to stress. The foundation is represented by chronic HPA hypoactivity and deficits in empathy circuits and consequence processing, specific to psychopathic traits.

3.3. Interaction of the HPA Axis with the Prefrontal Cortex and Implications for Impulse Control. The clinical relevance of the HPA axis derives from its interaction with the prefrontal cortex – PFC, a structure essential for inhibitory control. Early experiences of adversity can disrupt HPA neuroendocrine regulation and can compromise the development and functioning of the PFC. The consequence is a reduction of the temporal interval between the unconscious initiation of the violent impulse and the conscious intervention that could inhibit it.

This mechanism is supported by neuroimaging data. In a 2008 fMRI study, Haynes et al. demonstrated that activity in the frontopolar and parietal cortex allowed prediction of the subject's choice up to 10 seconds before awareness of the decision, with 60% accuracy, significantly above the chance level of 50%. The results support the hypothesis that decision initiation occurs at an unconscious level, while consciousness intervenes subsequently to notify the choice already elaborated. In the context of weakened prefrontal control through neuroendocrine and structural dysfunctions, the window for conscious inhibition becomes insufficient to prevent transition to action.

3.4. Criminological Implications and Prevention Strategies. The neuroendocrine distinction between the two violence subtypes has major relevance for sanction individualization and for recidivism reduction. Reactive violence responds to interventions centered on emotional regulation and anger management. Instrumental violence primarily requires the implementation of situational barriers, environmental control, and limitation of opportunities for manifestation.

From a legal perspective, the offender is criminally liable in both cases if he has capacity for discernment, with the exception of situations involving alienating mental illness. Criminal punishment has limits as a deterrent factor for behavioral disorders.

In a criminological context, the focus shifts from acute reactivity to tonic alterations induced by chronic stress. The Stanford Experiment highlights the role of situational factors as triggers of latent predispositions. Thus, a deficit in fear or empathy can remain latent until the social role structure provides the opportunity for manifestation. Therefore, prevention strategies must include limitation of discretionary power, external supervision, and role rotation, as situational barriers capable of blocking the activation of biological predispositions.

3.5. Theoretical and Applied Implications. The HPA axis, through the regulation of cortisol secretion, functions as a bio-behavioral indicator of violence typology. Dysfunctions of this axis, ontogenetically shaped by early experiences of adversity, represent a fundamental biological link in the causal chain of aggression. When these neuroendocrine disturbances are corroborated with functional and structural deficits at the level of

the prefrontal cortex, self-regulation capacity is severely compromised, and the individual acts impulsively, prior to conscious cognitive processing of consequences.

Therefore, effective interventions must combine two directions: restoration of neuroendocrine balance through reduction of chronic stress and optimization of situational factors that block the conversion of predisposition into violent act. HPA axis alteration thus represents a neuroendocrine decoupling with predictive value for clinical and criminological interventions.

IV. Neurotransmitters and Hormones. 4.1. Serotonin (5-HT). Serotonin exerts an inhibitory effect on impulsive aggression. Low levels of its metabolite, 5-hydroxyindoleacetic acid (5-HIAA), measured in cerebrospinal fluid (CSF), reflect deficient serotonergic activity. The mechanism involved consists of reduced prefrontal control over impulses generated at the limbic level, which "correlates with a history of violent behavior" [7].

4.2. Mesolimbic Dopaminergic System The mesolimbic dopaminergic system mediates reward sensitivity. Sensitization of this system increases the salience of immediate rewards and reduces risk aversion, "facilitating instrumental aggression" [8].

The interaction between systems is fundamental: reduced serotonergic function weakens inhibitory mechanisms while excessive dopaminergic activity amplifies impulsivity. This dual action, reduction of the serotonergic brake and amplification of the dopaminergic accelerator, creates a neurochemical substrate favorable to impulsive aggression under conditions of chronic stress.

4.3. Cortisol. Cortisol sensitizes the mesolimbic dopaminergic system, markedly increasing stimuli associated with immediate reward and reducing risk aversion.

Low cortisol levels signal underactivation of the stress system, which determines active seeking of stimulation in order to reach an optimal level of arousal, thus explaining why sanctions do not produce the anticipatory anxiety necessary to stop the act. This hormonal hyporeactivity causes the individual to remain "cold" in high-risk situations, facilitating the execution of violent acts without remorse or fear of consequences.

4.4. Gamma-aminobutyric Acid (GABA). Gamma-aminobutyric acid, the main inhibitory neurotransmitter of the Central Nervous System, mediates anxiolytic effects through modulation of neuronal excitability. Deficits in GABAergic function, frequently encountered in impulse control disorders, diminish the efficiency of this regulation, facilitating uncontrolled escalation of emotional activation.

Gamma-aminobutyric acid (GABA) controls the threshold for triggering defensive reactions, "GABAergic deficits being associated with uncontrolled outbursts of anger" [9].

The pharmacological perspective is of direct interest to criminology as well, since potentiation of GABAergic transmission through administration of benzodiazepines or mood stabilizers significantly reduces reactive aggression. This neuroendocrine interaction has evident clinical relevance.

Interactions between hormones and neurotransmitters are shaped by early experience through epigenetic mechanisms. Exposure to maltreatment in childhood can induce changes that alter behavioral reactivity to hormonal fluctuations in adulthood.

4.5. Testosterone. Testosterone, often correlated with predisposition toward aggression, is mediated by complex environmental and psychological factors and does not cause violence directly, but "amplifies motivation for dominance and status" [10], its effects being "modulated by cortisol level (dual-hormone hypothesis) and by prefrontal context" [11].

Testosterone functions as an amplifier of motivation for status and dominance, not as a direct determinant of violence. Its behavioral effects are conditioned by cortisol level, by personality traits, and, crucially, by the social context in which the individual acts. Un-

derstanding this complex interaction is essential in order to avoid a unilateral hormonal approach as well as to design interventions that target the social environment, not only biology.

The hormone, therefore, does not prescribe the strategy, but intensifies motivation, leaving the choice of means to the latitude of learned norms.

"Testosterone reduces prefrontal serotonergic tone, diminishing inhibitory control". [12].

Considerations. Violence does not result from the isolated action of a single hormone or neurotransmitter, but from the dynamic interaction between them. Hormones define the motivational context and reactivity thresholds, while neurotransmitters translate behavioral decisions in real time. Understanding this interdependence is essential for a truly integrated etiological approach and for effective interventions at multiple levels.

From an ontogenetic perspective, interactions between hormones and neurotransmitters are shaped by early experience through epigenetic mechanisms.

Exposure to maltreatment during childhood induces hypermethylation of the promoter region of the MAOA gene (monoamine oxidase A), responsible for the catabolism of serotonin, dopamine, and norepinephrine, as well as hypomethylation of the glucocorticoid receptor gene. These epigenetic modifications persist into adulthood and alter behavioral reactivity to hormonal fluctuations. Thus, identical levels of testosterone can generate diametrically opposed phenotypic responses, depending on the individual epigenetic profile of the neurotransmission systems.

From a criminological perspective, understanding violence requires moving beyond unimodal analyses and investigating these interactions, since the effect of a hormone depends on the neurochemical state of the system on which it acts, and vice versa.

Impulsivity and sensation seeking function as proximal psychological mechanisms that translate neurobiological vulnerability (prefrontal hypoactivation, autonomic hyporeactivity) into concrete behavior. They explain why some individuals choose violence not out of necessity, but because, in that moment, it represents the most accessible and most stimulating behavioral option.

Behavioral disorders reflect diffuse dysfunctions of neurotransmission and emotional processing but do not have an identifiable destructive lesional substrate.

V. Immunological Level. Recent literature in medicine and neuroscience shows that immunological imbalances, through chronic neuroinflammation and alteration of the cytokine profile, modulate impulse control circuits and are associated with increased risk of violent behavior.

This state of systemic inflammation directly affects the blood-brain barrier and neuronal communication in prefrontal regions, eroding the individual's "biological brake". Practically, a chemically hyperactivated immune system can keep the brain in a state of permanent defensive alert, in which neutral stimuli are erroneously perceived as threats, triggering disproportionate aggressive reactions.

Research highlights the decisive role of the prefrontal cortex in braking impulses and in moral judgment, as well as the involvement of the amygdala and the limbic system in threat assessment, processing of fear and reactive aggression.

VI. Autonomic Physiological Level. **6.1. Basal Heart Rate**. "Low basal heart rate is a replicable predictor of persistent antisocial behavior" [13], explained by hypoarousal (stimulation seeking) or by fearlessness (insensitivity to punishment).

A low basal heart rate and reduced physiological reactivity do not directly produce violent behavior. They rather represent physiological indicators of a motivational structure oriented toward stimulation seeking and are marked by insensitivity to punishment.

Although their predictive value is limited at the individual level, at the group level it becomes significant and gives us a non-invasive way to observe underlying neurobiological vulnerability.

6.2. Heart Rate Variability (HRV). Heart Rate Variability (HRV) is defined as the physiological oscillation of intervals between two successive heartbeats and constitutes a non-invasive index of autonomic nervous system flexibility, particularly of parasympathetically mediated vagal tone. Unlike average heart rate, which quantifies the general level of autonomic arousal, HRV reflects the organism's capacity for dynamic self-regulation, i.e., the ability to modulate the physiological response in accordance with fluctuating contextual demands.

Within the neurovisceral model, high HRV values indicate efficient prefrontal inhibitory control exerted over subcortical structures, while low HRV values signal autonomic rigidity and an increased predisposition toward emotional dysregulation.

At the general population level, high HRV at rest correlates positively with adaptive emotional regulation, inhibitory control, and optimal social functioning. In contrast, low HRV is associated with deficits in anger management, increased impulsivity, and tendencies toward reactive aggression.

"Low heart rate variability (HRV) reflects autonomic rigidity and deficient prefrontal control, being associated with slow recovery after challenge [14]".

This mechanism presupposes acceptance of a regulation and self-regulation model through neurovisceral integration.

The ventromedial prefrontal cortex exerts tonic inhibitory control over the amygdala, a control that is expressed peripherally through increased heart rate variability. Diminished efficiency of prefrontal control leads to reduced vagal tone (tone of the vagus nerve), decreased HRV, and the establishment of a rigid autonomic pattern, characterized by "all-or-nothing" responses to stressors.

Heart rate variability is not only a physiological parameter, but a window into the individual's self-regulation capacity.

Low HRV does not cause violence, but reflects rigidity of the emotional control system, increasing the probability that aggressive activation, once initiated, will escalate uncontrollably.

From a criminological perspective, monitoring and training HRV could represent a promising target for prevention and intervention, especially because vagal nerve tone can be stimulated through new non-invasive technologies already in use as well as through actions and activities used in daily life (such as pronouncing the alphabet, pronouncing consonants and vowels, and vocalization in general).

6.3. Electrodermal Response. Electrodermal activity (EDA – Electrodermal Activity) represents a physiological indicator of sympathetic nervous system activation, and is frequently used for evaluating emotional response and reactivity to stress.

"Attenuated electrodermal response indicates fear conditioning deficit, characteristic of psychopathy" [15], with a clear dissociation between reactive aggressors (hyperreactivity) and proactive ones (hyporeactivity).

The predictive value of electrodermal activity (EDA) is not absolute, but depends on interaction with environmental factors.

Electrodermal hyporeactivity predicts violent behavior only when it is accompanied by contextual risk factors, such as maltreatment or affiliation with deviant groups. Conversely, in supportive and protective environments, the same physiological profile can be associated with adaptive traits, such as courage and stability in crisis situations.

This plasticity again emphasizes that biological markers do not function as immuta-

ble determinants, but as vulnerability or resilience factors, whose behavioral manifestation is modulated by context.

Electrodermal response provides direct access to fear processing and aversive learning. Hyporeactivity does not cause violence, but eliminates one of the fundamental mechanisms of behavioral inhibition: anticipatory fear of negative consequences.

From a criminological perspective, understanding this mechanism is essential both for differentiating subtypes of aggressors and for designing interventions that compensate for the deficit in learning through punishment with alternative strategies for behavioral modification.

Conclusions and proposals. Knowledge of the individual's profile types is necessary for a deeper understanding of individual differences in reactions to the same risk stimuli, for counseling (by experts in the field) on addressing specialists according to the individual's frequent symptoms, and for correct implementation of prevention based on reactions to *endogenous vs exogenous* stimuli and behavior from the past, present, or in the commission of acts.

Studies highlight that violent criminality results from the complex interaction between biological vulnerability and environmental factors. Integrated understanding of these mechanisms provides the basis for solid risk assessment strategies.

When the individual understands the critical role of accumulated stress, the dynamic configuration of vulnerabilities at the neural, neurochemical, hormonal, and Autonomic Nervous System levels, he will be able to intrinsically generate an increased desire to modulate the reactivity threshold and to make inhibition more efficient. The individual who does not suffer from alienating pathologies has discernment in daily life and, through knowledge of his own general psycho-neuro-physiological state, will be able to anticipate moments of imbalance and will be able to prevent the outcome of acts through their very anticipation.

Effective intervention must be multi-level, targeting both individual risk factors (development of inhibitory control, anger and fear management), and contextual factors (family support programs, reduction of exposure to violence).

Within this model also fits the neuropsychoendocrine and immunophysiological approach of the present work, which details the biological level of the equation, without attributing to it an exclusively causal status, but that of a link in a complex etiological chain.

Biological vulnerabilities and personality traits increase the probability of intense emotional activation but it is the deficit of regulation that transforms this activation into an aggressive act. Development of the organism's regulation skills therefore represents the most accessible and most modifiable objective of preventive intervention.

Proposals. Specialized interventions: Initiation by anti-violence associations, through experts in the field, of targeted programs focused on self-regulation, frustration tolerance, and chronic stress reduction to restore neuroendocrine balance. The usefulness of these interventions would keep under control the risk management of committing illicit acts through violence but above all the probability of not reoffending.

Controlled hormonal evaluation: Possibility of prescription by a physician of hormonal evaluations in the presence of individualized clinical indications, with informed consent from parents/guardians and the minor if they have reached 14 years of age, respecting strict bioethical standards and GDPR.

*School awareness programs*l*: Non-invasive, optional programs for ages 9-16, aimed at emotional self-regulation, carried out with prior consent from parents/guardians.

Use of neuroimaging in justice: Use of neuroimaging techniques for assessing criminal responsibility in cases of violent offenses, exclusively when there is a documented

history of prefrontal brain lesions occurring prior to and temporally correlated with the onset of violent behavior (suspicion of pseudopsychopathy/disinhibitory syndrome).

The proposals will be submitted to the Chamber of Deputies in Rome, Italy, within the Anti-Violence Campaign.

Bibliographical references

1. Raine A. (2002). Biosocial studies of antisocial and violent behavior in children and adults: A review. In: Journal of Abnormal Child Psychology, 30(4), p.311-326. Available: http://doi.org.
2. Richard J. Davidson, Kent M. Putnam, and Christine L. Larson. Dysfunction in the neural circuitry of emotion regulationba possible prelude to violence. In: Science 289, No.5479 (2000): p.591-593. Available: http://doi.org.
3. Adrian Raine, Tomas Lencz, Susan Bihrle, Lori LaCasse, and Patrick Colletti. Reduced prefrontal gray matter volume and reduced autonomic activity in antisocial personality disorder. In: Archives of General Psychiatry 57, No.2 (2000): p.119-127. Available: http://doi.org.
4. Kent A. Kiehl et al. Limbic abnormalities in affective processing by criminal psychopaths as revealed by functional magnetic resonance imaging. In: Biological Psychiatry 50, No.9 (2001), p.677-684. Available: http://doi.org.
5. Matti Virkkunen et al. Low cerebrospinal fluid 5-hydroxyindoleacetic acid concentration differentiates impulsive from nonimpulsive violent behavior. In: Life Sciences 33, No.26 (1983), p:2609-2614. Available: http://doi.org.
6. Joshua W. Buckholtz et al. Mesolimbic dopamine reward system hypersensitivity in individuals with psychopathic traits. In: Nature Neuroscience 13, No.1 (2010), .29-31. Available: http://doi.org.
7. Klaus A. Miczek et al. Social and neural determinants of aggressive behavior: Pharmacological access to excitatory and inhibitory mechanisms. In: Psychopharmacology 163, No.3-4 (2002), p.434-453. Available: http://doi.org.
8. Corina Eisenegger, Johannes Haushofer, and Ernst Fehr. The role of testosterone in social interaction. In: Trends in Cognitive Sciences 15, No.6 (2011), p.265-271. Available: http://doi.org.
9. Corina Eisenegger et al. Prejudice and truth about the effect of testosterone on human bargaining behaviour. In: Nature 463, No.7279 (2010), p.356-359. Available: http://doi.org.
10. Michael Birger et al. Aggression: The testosterone-serotonin link. In: The Israel Medical Association Journal (IMAJ) 5, No.9 (2003), p.653-658. Available: http://ima.org.il.
11. Jill Portnoy, David P. Farrington. Resting heart rate and antisocial behavior: A meta-analysis. In: Aggression and Violent Behavior 22 (2015), p.36-45. Available: http://doi.org.
12. Julian F. Thayer, Richard D. Lane. A model of neurovisceral integration in emotion regulation and dysregulation. In: Journal of Affective Disorders 61, No.3 (2000), p.201-216. Available: http://doi.org.
13. Adrian Raine, Tomas Lencz, Susan Bihrle, Lori LaCasse, Patrick Colletti. Reduced prefrontal gray matter volume and reduced autonomic activity in antisocial personality disorde. In: Archives of General Psychiatry 57, No.2 (2000), p.119-127. Available: http://doi.org.

CZU 342.7(498+478) **DOI: https://doi.org/10.5281/zenodo.20828592**

DEVELOPMENT OF THE LEGAL FRAMEWORK ON THE RIGHT TO PRIVACY IN ROMANIA AND THE REPUBLIC OF MOLDOVA

Daniel CRISTEA,
PhD, Chief Police Commissioner,
Criminal Investigation Office, Buzau County Police Inspectorate,
Romania
ORCID: 0000-0002-5786-2619

Viorica OSOIANU,
Master in Law, Master in Psychology,
ORCID: 0009-0004-9001-930X

Abstract

The right to privacy has undergone significant evolution in Romania and the Republic of Moldova, amid the political, social and legal transformations of the last decades. In both states, the consolidation of this fundamental right has been influenced both by the internal dynamics of legislative reforms and by the progressive integration into the European legal space. Romania has developed a robust regulatory framework under the impact of accession to the European Union and the jurisprudence of the European Court of Human Rights, which has led to the modernization of legislation on data protection, technological surveillance and procedural guarantees in criminal proceedings. The Republic of Moldova, although in a distinct process of harmonization, has gradually adopted European standards, strengthening data protection institutions and introducing control mechanisms over state interference in private life.

The study follows the regulatory evolution, European influences, relevant jurisprudence and current challenges, such as digitalization, electronic surveillance and data protection in the era of emerging technologies. The conclusions underline the need for continued harmonisation and strengthening of procedural safeguards to ensure an appropriate balance between the public interest and the protection of privacy in both legal systems.

***Keywords**: privacy, artificial intelligence, legislation, rights, protection, digital surveillance, interceptions.*

DEZVOLTAREA CADRULUI LEGAL PRIVIND DREPTUL LA VIAȚA PRIVATĂ ÎN ROMÂNIA ȘI REPUBLICA MOLDOVA

Abstract

Dreptul la viața privată a cunoscut o evoluție semnificativă în România și Republica Moldova pe fondul transformărilor politice, sociale și juridice din ultimele decenii. În ambele state, consolidarea acestui drept fundamental a fost influențată atât de dinamica internă a reformelor legislative, cât și de integrarea progresivă în spațiul juridic european. România a dezvoltat un cadru normativ robust sub impactul aderării la Uniunea Europeană și al jurisprudenței Curții Europene a Drepturilor Omului, ceea ce a determinat modernizarea legislației privind protecția datelor, supravegherea tehnologică și garanțiile procedurale în procesul penal. Republica Moldova, deși aflată într-un proces distinct de armonizare, a adoptat treptat standarde europene, consolidând instituțiile de protecție a datelor și introducând mecanisme de control asupra ingerințelor statului în viața privată.

Studiul urmărește evoluția normativă, influențele europene, jurisprudența relevantă și provocările actuale, precum digitalizarea, supravegherea electronică și protecția datelor în era tehnologiilor emergente. Concluziile subliniază necesitatea unei armonizări continue și a întăririi garanțiilor procedurale pentru a asigura

un echilibru adecvat între interesul public și protecția vieții private în ambele sisteme juridice.

Cuvinte-cheie: viața privată, inteligență artificială, legislație, drepturi, protecție, supraveghere digitală, interceptări.

Introduction. The right to privacy represents one of the fundamental guarantees of human dignity and individual freedom, being constantly enshrined in international, European and constitutional instruments. The evolution of this right in Romania and the Republic of Moldova reflects the political, social and legal transformations of the two states, as well as the determining influence of the case law of the European Court of Human Rights (ECtHR). In the context of accelerated digitalization, the expansion of electronic surveillance and the massive processing of personal data, the protection of privacy is becoming a dynamic field, subject to continuous challenges.

Methods and materials applied. The research methods include: *the analytical method* of legislation from the point of view of the right to privacy and the role in its application at the level of the two states, Romania and the Republic of Moldova; *the logical method* analyzed from the point of view of the deduction technique; and last but not least *the empirical method*, by presenting the cases of the ECtHR case law. At the same time, it also includes an analysis of the development of the legal framework regarding the right to privacy in the two states, through a comparative, contextualized and interdisciplinary approach, through the constitutional and legislative dimension, as well as through the impact of European jurisprudence and international standards.

Discussions and results obtained. The development of the Romanian legal framework in the field of privacy protection represents a broad and complex process, influenced both by the transition from a totalitarian regime to democracy and by the gradual integration into the European legal space. The legislative transformations of the last decades reflect the effort of the Romanian state to overcome the authoritarian legacy and to build a system of guarantees compatible with international standards on fundamental rights. In this context, the protection of privacy has become an essential indicator of the consolidation of the rule of law.

The communist regime in Romania (1947-1989) was marked by a systematic surveillance of the population, exercised mainly through the Securitate, the institution responsible for the information control of society. Surveillance of communications, interception of telephone conversations, monitoring of correspondence and collection of information about the private life of citizens were common practices, lacking any form of judicial control or procedural guarantees [1]. In this context, the notion of privacy was practically non-existent, and individual rights were subordinated to the political interests of the state.

This legacy had significant consequences after 1989. On the one hand, Romanian society developed a heightened sensitivity towards any form of surveillance, and on the other hand, state institutions had to reconstruct a completely new regulatory framework, capable of providing real guarantees against abuses. In this sense, the post-communist period represented a moment of profound legal reconstruction, in which the protection of privacy became a central element of democratization.

The adoption of the Romanian Constitution, in 1991, represented a moment of rupture with the totalitarian past, explicitly enshrining for the first time fundamental rights related to privacy: Art. 26 – which guarantees the right to intimate, family and private life; Art. 27 – which enshrines the inviolability of the home; Art. 28 – which protects the secre-

cy of correspondence [2]. These provisions constituted the constitutional foundation of the protection of private life in Romania.

The revision of the Constitution in 2003 consolidated this framework, adapting it to European standards in view of accession to the European Union. In particular, the protection of personal data was strengthened, reflecting European regulatory developments and the need for modern regulation in a constantly changing technological context [3].

The first modern regulatory act in the field of personal data protection was Law No.677/2001, adopted to transpose Directive 95/46/EC. It introduced fundamental principles regarding data processing, the rights of data subjects, the obligations of operators, etc. [4].

The entry into force of Regulation (EU) 2016/679 (GDPR) was a turning point, as it is directly applicable in all Member States. The GDPR introduced innovative concepts such as controller responsibility, data protection by design and, implicitly, the right to portability and the right to be forgotten [5]. Law No.190/2018 completed this framework, establishing implementing rules specific to the national context. Along with the Regulation, a turning point in the application of criminal procedure rules was the entry into force of Directive (EU) 680/2016, which is directly applicable in terms of the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of preventing, detecting, investigating or prosecuting criminal offences or the execution of criminal penalties. In Romania Law No.363/2018, entered into force on January 7, 2019, completing this framework, while also establishing general application rules "at all stages of criminal proceedings and applicable to all authorities involved in the prevention, detection, investigation and prosecution of crimes, as well as in the execution of criminal sanctions" [6, p.10].

Of course, aspects related to the respect for the right to privacy in the application of criminal procedural rules were provided for in the Criminal Procedural Code (CPC), with the regulation of Directive (EU) 680/2016, this protection was strengthened. Interception of communications and technical surveillance are regulated in the CPC, which imposes strict conditions: judicial authorization, thorough motivation, time limitation and subsequent control [7]. However, the case law of the European Court of Human Rights (ECtHR) has repeatedly highlighted deficiencies in the Romanian system, even if these deficiencies could be removed by current regulations. For example, in the case of Rotaru v. Romania (2000), the Court found the lack of adequate guarantees regarding informational surveillance [8], and in the case of Dumitru Popescu v. Romania (2007) problems related to telephone interceptions were identified [9]. These decisions, which are not the only ones, have led to important legislative and institutional reforms.

The expansion of digital technologies, however, required the adoption of specific regulations, prior to the adoption of Regulation (EU) 679/2016 and Directive (EU) 680/2016. Law 506/2004 on the processing of data in the electronic communications sector and Law 365/2002 on electronic commerce and cybersecurity legislation, created the regulatory framework intended to protect users in the online environment [10]. Also, video surveillance, increasingly present in public and private spaces, required clear rules on the proportionality and legality of image processing.

The entry into force of the new Civil Code in 2011 also strengthened the protection of privacy, enshrining in Articles 71-75 rights such as the right to image, dignity, private life and the protection of personal data [11]. Domestic case law was rich at the time, especially in cases concerning the relationship between freedom of the press and the protection of the reputation of public figures. For example, in *Rotaru v. Romania* (2000), the Court high-

lighted the persistence of practices inherited from the communist period [8]. In *Dumitru Popescu v. Romania* (2007), the issues of telephone interception were again brought to the fore [9]. Other cases, such as *Petrina v. Romania*, *Bucur and Toma or Văduva*, addressed the relationship between freedom of the press and the protection of reputation, contributing to clarifying the standards applicable in the Romanian context [12].

The protection of privacy in Romania is still in a continuous process of transformation, influenced by technological dynamics, European legislative developments and the tensions between security, freedom and fundamental rights. If the first two post-communist decades were dominated by the reconstruction of the regulatory framework, the recent period is marked by the need to adapt to new digital realities, the expansion of technological surveillance and the pressures generated by national security.

In this sense, the digitalization of Romanian society has generated significant opportunities, but also major risks for privacy. The expansion of social networks, the massive use of smart devices, the collection of biometric data and the development of artificial intelligence have created an ecosystem in which personal data is processed on a large scale.

In relation to video surveillance and facial recognition, in Romania, in recent years, local authorities and public institutions have implemented extensive video surveillance systems, sometimes integrated with facial recognition technologies. These practices have raised issues regarding the proportionality of the measure, the information of the persons concerned, including the lack of clear guarantees regarding the storage and access to data.

The accelerated expansion of digital technologies, the decrease in equipment costs and the pressures related to public security have led to a massive proliferation of surveillance cameras, both in urban and rural areas. However, this development raises fundamental questions regarding the relationship between the need to prevent crime and the respect for the right to privacy, enshrined in the Constitution and European legislation.

The first video surveillance systems were implemented in Romania in the early 2000s, especially in large cities, as part of urban modernization strategies and increased public safety [13]. Subsequently, video surveillance has rapidly expanded to public institutions, schools, hospitals, means of transport, shopping centres and residential areas. In many localities, video cameras have become a common feature of the urban landscape, being perceived as a necessary tool for crime prevention and traffic management.

However, this expansion has been accompanied by fragmented and in some cases insufficient regulation. Although local authorities have justified the installation of cameras by the need to protect public order, not all projects have been accompanied by data protection impact assessments, as required by European law.

However, video surveillance involves the processing of personal data, as images of identifiable persons are considered personal data. Therefore, any video surveillance system must comply with the principles of the GDPR, such as lawfulness, transparency, data minimisation and storage limitation [5]. Operators are required to demonstrate the necessity and proportionality of the surveillance, as well as to clearly inform data subjects.

Law No.190/2018, which supplements the GDPR in Romania, sets strict conditions for the use of video surveillance, in particular in the context of employee monitoring or the processing of biometric data [14]. It imposes the obligation to carry out an impact assessment (DPIA) when the surveillance may generate high risks for the rights of data subjects.

Law No.333/2003 regulates the use of technical security systems, including video cameras, for the purpose of protecting property and persons [15]. It establishes obliga-

tions regarding the authorisation of the systems, the retention of records and access to data.

Many city halls have adopted decisions on the installation of cameras in public spaces, but these acts must comply with the principles of the GDPR and be accompanied by clear justifications regarding the need for surveillance.

In many cases, cameras are installed in areas where the risks are minimal, which contravenes the principle of proportionality. Generalised surveillance can lead to excessive monitoring of the population, without any real justification [14].

Many systems do not display clear notices about surveillance, which violates the transparency obligation set out in the GDPR [14].

Some institutions retain images longer than necessary, exceeding the recommended 30 day period. This practice contravenes the principle of storage limitation [14].

Video monitoring of employees is only permitted under strict conditions, but in practice abuses occur, such as continuous surveillance or the use of images for disciplinary purposes without justification [14].

However, the authorities justify video surveillance as a necessity to develop privacy, to prevent crime, to intervene quickly in emergencies, etc., but for large-scale video surveillance systems, the GDPR requires a data protection impact assessment (DPIA), which must analyse the risks to the data subjects and the measures to mitigate them [16].

Facial recognition is one of the most intrusive forms of surveillance, as it allows for the automatic identification of individuals and the tracking of their movements. In Romania, the use of facial recognition is still limited, but there are pilot projects in airports and public institutions [17]. The European Union proposes severe restrictions on the use of this technology in public spaces, and Romania will have to comply.

Although video surveillance can contribute to increasing public safety, its development in Romania is conditional on clear regulation, effective institutional oversight and a culture of data protection at the societal level, in order not to create the possibility of excessive surveillance in some areas, risks of institutional abuse, and even a lack of transparency and democratic control.

If we talk about the development of privacy protection in Romania, it cannot be understood in the absence of the European and international context. However, in the last three decades, the evolution of domestic legislation has been strongly influenced by European standards, the case law of the European Court of Human Rights (ECtHR), European Union regulations and global trends in data protection. Art. 8 of the ECHR enshrines the right to respect for private and family life, home and correspondence. In this sense, Romania, as a Member State of the Council of Europe, is obliged to respect these standards, and ECHR rulings have a profound impact on domestic legislation.

As mentioned above, judgments such as *Rotaru v. Romania* [8] and *Dumitru Popescu v. Romania* [9] have highlighted systemic deficiencies in information surveillance and telephone interception. These decisions have required Romania to clarify the procedures for authorizing interceptions, introduce additional guarantees regarding judicial review, regulate access to intelligence files, including strengthening democratic control mechanisms.

The ECtHR has also established a balance between freedom of expression (Art. 10) and the protection of private life (Art. 8). In cases such as *Petrina*, *Bucur and Toma or Văduva*, the Court has clarified the limits of criticism of public figures and sanctioned disproportionate interferences with freedom of the press [12].

In this regard, Romania's accession to the European Union in 2007 was a decisive

moment for the modernization of data protection and privacy legislation.

At present, Romania is at the crossroads of two major global models:

• *The European model* – focused on the protection of fundamental rights; and

• *The American model* – oriented towards self-regulation and economic freedom, which generates tensions in areas such as international data transfers, the use of digital platforms and online surveillance.

In connection with emerging technologies – artificial intelligence, big data, profiling algorithms – complex issues are raised regarding the transparency of automated decisions, massive data collection, lack of user control over their own information [18, pp.111-112]. In this regard, the European Union is preparing a specific legislative framework (AI Act), which will directly influence Romanian legislation. However, artificial intelligence, facial recognition, behavioral analysis and biometric data processing require specific rules to prevent abuse and ensure algorithmic transparency. The adoption of the future European AI Act will impose additional obligations on Romania, including impact assessments on fundamental rights, strict supervision of high-risk systems, prohibition of certain intrusive practices. In this regard, legislative projects in the field must be harmonized with European standards on data protection, for a clear definition of competences, the introduction of additional procedural guarantees, limitation of access to traffic data, etc.

Regarding criminal procedural rules, although European integration has had a positive impact, there are also some challenges, in the sense that the solutions adopted by the courts and which violate the right to privacy, the European requirements in the field are considered to have been superficially applied.

As a development of privacy in Romanian legislation, ANSPDCP participates in the European Data Protection Board (EDPB), contributing to the development of guidelines and interpretations on the application of the GDPR [19], being essential for the standardization of practices at European level.

In the Republic of Moldova, the evolution of this right reflects the profound transformations that the state has undergone since the proclamation of independence in 1991. From a fragmentary legislation, influenced by the Soviet tradition, a modern regulatory framework has gradually emerged, aligned with European and international standards.

This evolution has not been linear. It has been determined by internal factors — legislative reforms, modernization of the Civil Code, development of doctrine — and external factors, in particular the influence of the European Court of Human Rights (ECtHR) and the need for harmonization with the acquis communautaire. Currently, the right to privacy is protected by a combination of constitutional, civil, criminal and administrative norms, complemented by case law and doctrine.

The Republic of Moldova acceded to the Council of Europe in 1995, and the European Convention on Human Rights (ECHR) has become an integral part of the domestic legal order. Article 8 of the ECHR guarantees the right to respect for private and family life, home and correspondence [20, p.109], being directly applicable in the domestic legal order [20], establishing clear limits to state interference, thus imposing the existence of procedural guarantees and, last but not least, obliging the state to ensure a balance between the public interest and individual rights.

The Constitution of the Republic of Moldova takes up these guarantees in Art. 28 enshrining the inviolability of intimate, family and private life [21]. This constitutional provision became the foundation for the subsequent development of domestic legislation and national jurisprudence.

In the first years of independence 1991-2000, the legislation of the Republic of Mol-

dova was still strongly influenced by the Soviet tradition, in which personality rights were poorly developed. The protection of privacy was fragmentary, dispersed in disparate norms in the Criminal Code, the Family Code or the legislation on mass media.

Between 2000 and 2011, the Republic of Moldova began to adopt modern normative acts inspired by European standards, such as the Law on Access to Information (2000), the Law on Protection of Personal Data (2011) and the first regulations on interceptions and technical surveillance.

However, a key moment in the development of the legal framework was the adoption of Law No.133/2018 on the modernization of the Civil Code. Through this reform, Art. 43 was introduced into the Civil Code, which expressly enshrines the category of "personality rights", including the protection of privacy, image, dignity and personal data [22].

Section II of Title II of the Civil Code regulates in detail the respect due to the human being and the rights inherent to it, marking a rapprochement with the German model and modern European standards in the field of personality rights.

The protection of privacy in the Republic of Moldova is closely linked to the legal regime of personal data. Law No.133/2011 on Protection of Personal Data established the general framework for data processing, also creating the National Supervisory Authority (National Center for the Protection of Personal Data).

Although the law does not fully reproduce the GDPR standards, it was influenced by them, and the Republic of Moldova seeks to harmonize its legislation with the European acquis.

The Republic of Moldova has been party to numerous cases regarding the violation of Art. 8 of the ECHR, which has led to legislative and administrative adjustments. The Government Agent Portal lists cases such as *Balmuș v. Republic of Moldova* (2025), *S.M. v. Republic of Moldova* (2025), *Mazur v. Republic of Moldova* (2023) or *Straistă v. Republic of Moldova* (2022), which concerned issues such as illegal interceptions, disclosure of personal data or disproportionate interference by the authorities [23].

These decisions have reinforced the state's obligation to ensure effective procedural safeguards against abuse.

Moldovan courts have increasingly started to apply ECHR standards in cases concerning privacy, particularly in disputes concerning defamation, protection of image, access to personal data or interference by authorities in family life.

In the absence of a rigid definition of the notion of "private life", courts must apply a flexible test, adapted to the circumstances of each case.

The legal literature in the Republic of Moldova has evolved significantly in the last decade. Authors such as Tatiana Tabuncic have analyzed the impact of the modernization of the Civil Code on the protection of privacy, emphasizing the importance of introducing personality rights into civil law [22].

Research conducted within the Institute of Criminal Sciences and Applied Criminology has also highlighted the conceptual difficulties of defining privacy and the need for continuous adaptation of legislation to social and technological developments.

A major contribution is the doctoral thesis of Iulia Butnaru (2022), which analyzes in detail the legal regulation of the inviolability of private, family and intimate life, providing a broad synthesis of the normative and jurisprudential framework [24].

The increasing use of digital technologies, social networks and video surveillance systems raises new issues regarding the protection of privacy. The Republic of Moldova must continue to harmonize its legislation with European standards, in particular with the GDPR.

The case-law of the ECtHR shows that the boundaries between public interest and private life are fluid and must be analyzed contextually [25]. In the Republic of Moldova, the press and public authorities are called upon to respect this balance, avoiding arbitrary interference.

For effective protection of privacy, it is necessary to strengthen the institutional capacity of supervisory authorities, as well as continuous training of judges, prosecutors, police bodies and lawyers.

Conclusions. The evolution of the legal framework on the protection of privacy in Romania reflects a broad process of democratization and Europeanization. From a regime characterized by intrusive surveillance and the absence of legal guarantees, Romania has reached a complex regulatory system, aligned with European standards and adapted to contemporary technological challenges. However, tensions between security, freedom of expression and the protection of privacy remain current, and the consolidation of a legal culture of respect for fundamental rights is a continuously evolving process.

The development of the legal framework in the Republic of Moldova on the right to privacy reflects a complex process of legal modernization, influenced by European standards, technological developments and the consolidation of the rule of law. The introduction of personality rights in the Civil Code, the adaptation of the legislation on personal data and the impact of the ECtHR case-law are essential steps in this evolution. However, contemporary challenges require a continuous adaptation of legislation and judicial practice to ensure real and effective protection of privacy.

Bibliographical references

1. https://dev.energynomics.ro/marile-orase-din-romania-au-inceput-sa-investeasca-in-sisteme-de-supraveghere-video-publica/?utm_source=copilot.com (visited 15.03.2026).
2. Constitution of Romania of 21 November 1991. In: Official Gazette No.233 of 21 November 1991, art. 26-28.
3. Revision of the Constitution of 2003. In: Official Gazette No.767 of 31 October 2003.
4. Law No.677/2001 of 21 November 2001 for the protection of individuals with regard to the processing of personal data and the free movement of such data. In: Official Gazette No.790 of 12 December 2001.
5. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), art. 5. In: Official Journal L.119/1, of 04.05.2016. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32016R0679.
6. Cristea D. Protection of personal data in criminal proceedings. Doctor of Laws Thesis, Chişinău, 2023, 211p. Available: https://www.anacec.md/files/Cristea-teza.pdf (visited 09.03.2026).
7. Criminal Procedure Code, of July 1, 2010, updated by Law No.135/2010. Available: https://legislatie.just.ro/Public/DetaliiDocumentAfis/185907. (visited 15.03.2026).
8. ECtHR Judgment in the case of Rotaru v. Romania, of May 4, 2000, In: Official Gazette No.19 of 11 January 2001. Available: https://legislatie.just.ro/Public/DetaliiDocument/25965 (visited 15.03.2026).
9. ECtHR Decision on the case of Dumitru Popescu v. Romania, 26 April 2007, No.71.525/01. In: Official Gazette No.830 of 5 December 2007. Available: https://hudoc.echr.coe.

int/eng?i=001-122747 (visited 15.03.2026).
10. Law No.506 of 17 November 2004, on the processing of personal data and the protection of privacy in the electronic communications sector. In: Official Gazette No.1101 of 25 November 2004 and Law No.365 of 7 June 2002, republished, on electronic commerce, In: Official Gazette No.959 of 29 November 2006.
11. Civil Code, of 17 July 2009, republished and updated by Law No.287/2009, art. 71-75. Available: https://legislatie.just.ro/Public/DetaliiDocument/162242 (visited 15.03.2026).
12. ECtHR Petrina v. Romania, of 14.10.2008, No.78060/01. Available: https://hudoc.echr.coe.int/eng?i=002-1896; Bucur and Toma v. Romania, of 8.01.2013, No.40238/02. Available: https://hudoc.echr.coe.int/eng?i=001-123026; Văduva v. Romania, of 25.02.2014, No.27781/06. Available: https://ier.gov.ro/wp-content/uploads/cedo/Vaduva-impotriva-Romaniei.pdf (accessed 15.03.2026).
13. Florian Banu, Liviu Ţăranu. Securitatea (1948-1989). Monograph. Vol. I. Ed. Cetatea De Scaun, 2016, 477 p.
14. Law No.190/2018 of 18 July 2018 on implementing measures for Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). In: Official Journal No.651 of 26 July 2018. Available: https://legislatie.just.ro/Public/DetaliiDocument/203151.
15. Law No.333/2003 of 8 July 2003, republished, on the guarding of objectives, goods, values and the protection of persons. The principle of proportionality is essential in assessing the legality of video surveillance. In: Official Journal No.189 of 18 March 2014. Available: https://legislatie.just.ro/Public/DetaliiDocument/156432.
16. Guidelines on Data Protection Impact Assessment (DPIA) and how to determine whether processing is "likely to result in a high risk" within the meaning of Regulation 2016/679. Adopted on 4 April 2017. Revised and adopted on 4 October 2017, p.1-27. Available: https://ec.europa.eu/newsroom/article29/items/611236 (visited 15.03.2026).
17. Pilot projects on facial recognition have been implemented in particular in airports and public institutions. Available: https://evz.ro/primul-aeroport-din-romania-cu-sistem-de-recunoastere-faciala-cu-inteligenta-artificiala.html?utm_source=copilot.com; https://calatoruldigital.ro/2019/05/recunoastere-faciala-aeroport-otopeni/?utm_source=copilot.com; https://www.monitorulcj.ro/actualitate/106362-camere-de-supraveghere-cu-inteligenta-artificiala-de-recunoastere-faciala-inclusiv-a-pasagerilor-deghizati-pe-aeroportul-cluj?-utm_source=copilot.com (visited 15.03.2026).
18. Manolache P., Ciobanu C., Cebotaru S., Șchiopu M. The impact of artificial intelligence in everyday life. In: Technical and scientific conference of students, master's and doctoral students, Technical University of Moldova, March 26-29, 2019. Chișinău, 2019, Vol.1, pp.211-212. Available: https://repository.utm.md/bitstream/handle/5014/2932/Conf_ UTM_2019_I_pg211-212.pdf?sequence=1&isAllowed=y (visited 15.03. 2026).
19. https://dataprotection.ro/?page=EDPB&lang=ro&utm_source=copilot.com (visited 15.03. 2026).
20. Galan D.C., Cucu V. Analysis of the right to privacy through the prism of Art. 8 ECHR. Institute of Criminal Sciences and Applied Criminology, Chişinău, 2020. Available: https://ibn.idsi.md/sites/default/files/imag_file/107-112_25.pdf?utm_source=co-

pilot.com (visited 15.03.2026).
21. Constitution of the Republic of Moldova, dated 29.07.1994. In: Official Gazette of the Republic of Moldova, No.1 of 12.08.1994.
22. Tabuncic T. Legal analysis of some attacks on privacy. In: "Realities and perspectives of national legal education", 2019, pp.45-60. Available: https://juridicemoldova.md/7816/analiza-juridica-a-unor-atingeri-aduse-vietii-private.html?utm_source=copilot.com (visited 15.03.2026).
23. Portal of the Government Agent of the Republic of Moldova, section "Right to private life". Portal of the Government Agent of the RM. relevant ECtHR decisions (2022–2025). Available: https://agent.gov.md/etichete/dreptul-la-viata-privata/?utm_source=copilot.com (visited 15.03.2026).
24. Butnaru I. Legal regulation and ensuring the inviolability of private, family and intimate life. Doctoral thesis, ULIM, Chişinău, 2022, 180p. Available: http://www.cnaa.md/files/theses/2022/58395/iulia_butnaru_thesis.pdf (visited 15.03.2026).
25. Bizlaw, The limit between the right to private life and the public interest observed through the prism of ECHR jurisprudence. 2016, pp.3-10. Available: https://www.bizlaw.md/2016/07/13/limita-dintre-dreptul-la-viata-privata-si-interesul-public-observata-prin-prisma-jurisprudentei-cedo?utm_source=copilot.com (visited 15.03.2026).

CZU 343.22 **DOI: https://doi.org/10.5281/zenodo.20840801**

PERSONS WHO ESCAPE CRIMINAL LIABILITY

Laurenţiu Gabriel CÎRSTEA,
PhD student,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Instructor Lecturer, Schengen Multifunctional Training Centre, Buzău,
Romania
ORCID: 0009-0001-2752-7940

Abstract

The depth of the phenomenon of evasion from criminal liability is an essential aspect of the functioning of the criminal justice system. The study starts from the definition of criminal liability as a fundamental institution of criminal law and highlights how it is affected when individuals manage to avoid the application of the law. The principles governing criminal liability, the necessary conditions for its engagement and its role in maintaining social order are presented.

The study analyzes the main forms of evasion, from fleeing the scene of the crime and concealing identity to the use of false documents, leaving the national territory and evading the execution of the sentence, with particular emphasis on new forms of evasion that have emerged in the digital environment, such as online anonymization, encryption of communications and the use of virtual identities.

The paper proposes a comprehensive set of measures to prevent and combat the phenomenon, structured around four main areas: legislative measures (updating regulations, tightening sanctions), institutional measures (inter-institutional cooperation, professional training), technological measures (electronic surveillance, integrated databases, biometric recognition) and international measures (European arrest warrant, extradition treaties). Social and educational measures aimed at increasing public confidence in justice and reducing the tendency to evade are also highlighted.

Keywords: criminal liability, evasion, evasion from criminal prosecution, evasion from the execution of punishment, criminality.

PERSOANELE CARE SE ESCHIVEAZĂ DE RĂSPUNDERE PENALĂ

Abstract

Profunzimea fenomenului eschivării de la răspunderea penală este un aspect esențial al funcționării sistemului de justiție penală. Studiul pornește de la definirea răspunderii penale ca instituție fundamentală a dreptului penal și evidențiază modul în care aceasta este afectată atunci când persoanele reușesc să evite aplicarea legii. Sunt prezentate principiile care guvernează răspunderea penală, condițiile necesare pentru angajarea acesteia și rolul său în menținerea ordinii sociale.

Studiul analizează principalele forme de eschivare, de la fuga de la locul faptei și ascunderea identității până la utilizarea actelor false, părăsirea teritoriului național și sustragerea de la executarea pedepsei, punându-se accent deosebit pe noile forme de eschivare apărute în mediul digital, precum anonimizarea online, criptarea comunicațiilor și utilizarea identităților virtuale.

Lucrarea propune un set amplu de măsuri pentru prevenirea și combaterea fenomenului, structurate pe patru direcții principale: măsuri legislative (actualizarea normelor, înăsprirea sancțiunilor), măsuri instituționale (cooperare interinstituțională, formare profesională), măsuri tehnologice (supraveghere electronică, baze de date integrate, recunoaștere biometrică) și măsuri internaționale (mandatul european de arestare, tratate de extrădare). De asemenea, sunt evidențiate măsuri sociale și educaționale menite să crească încrederea publicului în justiție și să reducă predispoziția la eschivare.

Cuvinte-cheie: răspundere penală, eschivare, sustragere de la urmărirea penală, sustragere de la executarea pedepsei, criminalitate.

Introduction. Criminal liability is one of the most important forms of legal liability, aiming to protect fundamental social values by sanctioning acts that violate the rule of law. However, in practice, not all persons who commit crimes are actually held accountable. The phenomenon of evasion of criminal liability constitutes a major problem for the judicial system, affecting public trust in justice and the efficiency of law enforcement.

Methods and materials applied. This work is based on an interdisciplinary approach, using methods specific to legal, criminological and sociological research. The aim was to analyze the phenomenon of evasion of criminal liability from a complex perspective, integrating both the theoretical and practical dimensions. Among the methods applied, we list: the comparative method, the doctrinal analysis method, the criminological analysis method, the static analysis method, the case study method.

Discussions and obtained results. Criminal liability is the most severe form of legal liability, being engaged when a person commits an act provided for by the criminal law, with the guilt required by it. It is the expression of the state's reaction to behaviors that harm fundamental social values, such as life, bodily integrity, freedom, property or public order [1, p.3-5].

The foundation of criminal liability is twofold: on the one hand, it is based on the need to protect the legal order and essential social interests; on the other hand, it is based on the principle of individual responsibility, according to which each person is responsible for their own actions. In doctrine, criminal liability is viewed as a legal consequence of the crime, being inseparably linked to its existence [2, p.45-47].

In Romanian criminal law, criminal liability establishes the conditions in which it is engaged, its limits and the forms of sanctioning. The state, through the judicial bodies, has the monopoly of the application of criminal liability, which reflects its public nature [3].

Criminal liability operates on the basis of fundamental principles, which ensure the fairness, legality and proportionality of the sanctions applied. These principles are enshrined in both domestic legislation and international human rights instruments.

The principle of legality, expressed by the maxim nullum crimen, nulla poena sine lege, implies that no person can be held criminally liable for an act that is not provided for as an offense by the criminal law in force at the time of its commission [4]. This principle guarantees the predictability and accessibility of the criminal norm, protecting the individual against arbitrariness.

Criminal liability is strictly personal, no one can be held criminally liable for the act of another. This derives from the idea of individual guilt and the need for the criminal sanction to be applied only to the person who committed the act [5, p.112-115].

In order to engage criminal liability, it is necessary for the act to be committed with guilt that is with intention, fault or praeterintent. Guilt represents the perpetrator's psychological attitude towards his act and its consequences [3]. Without guilt, there can be no criminal liability.

The sanction applied must be proportional to the seriousness of the act and the dangerousness of the offender. Proportionality is essential for maintaining fairness and for achieving the preventive and educational purpose of punishment [6].

Modern criminal law rejects inhuman or degrading punishments and promotes the social reintegration of the offender. This principle is enshrined in both the Romanian Constitution and the European Convention on Human Rights [7].

In order for a person to be held criminally liable, certain conditions provided by law must be met cumulatively. These are: the existence of an act provided by criminal law, the unjustified nature of the act, the guilt of the perpetrator, and the imputability of the act.

The first condition is that the act must be typical, that is, it must correspond to the description in the incrimination norm. Typicality is the objective element that delimits the crime from other forms of wrongdoing [3].

Even if an act is provided by criminal law, it does not attract criminal liability if there is a justifiable cause, such as self-defense, a state of necessity or the consent of the injured person in cases permitted by law [3].

The act must be committed with the form of guilt required by law. The lack of guilt excludes criminal liability, even if the act is typical and unjustified [3].

Imputability presupposes the person's capacity to be criminally liable, that is, the existence of discernment at the time of committing the act. Minors under 14 years of age and persons in a state of irresponsibility cannot be held criminally liable [3].

The purpose of criminal liability is twofold: on the one hand, it has a repressive role, sanctioning antisocial behavior; on the other hand, it has a preventive role, discouraging both the offender (special prevention) and society as a whole (general prevention) [8, p.45-47].

In addition, criminal liability aims at the social reintegration of the offender, by applying punishments and educational measures adapted to his needs. Modern criminal law emphasizes re-education and reinsertion, not just punishment.

Criminal liability is an essential instrument for maintaining social order. It guarantees that the fundamental values of society are protected and that their violation entails legal consequences. In the absence of an effective system of criminal liability, the state would lose its authority and citizens' trust in justice would be seriously affected.

Evasion of criminal liability represents the totality of actions or inactions by which a person seeks to prevent being held accountable for a criminal act committed. In doctrine, the term is associated with the idea of avoiding, evading or evading judicial mechanisms, by direct or indirect means.

This conduct can occur at any stage of the criminal process, before the start of the criminal prosecution, during it, at the trial stage or after the delivery of a final judgment. Evasion is not a strictly defined legal concept in the Criminal Code, but a doctrinal and practical concept, used to describe behaviors that prevent the achievement of the act of justice.

In a broad sense, evasion includes both active actions (escape, use of false documents, influencing witnesses) and deliberate inactions (refusal to appear at summonses, concealment of identity). In a narrow sense, the term refers to physical evasion from criminal prosecution or execution of punishment. For example:

1. *Evasion vs. Justified Non-Appearance*: Failure to appear before judicial bodies does not constitute evasion if it is justified by objective reasons, such as illness, inability to travel or other force majeure situations. Evasion implies the clear intention to avoid contact with the authorities [9];

2. *Evasion vs. Right to Silence*: The right to silence is a fundamental guarantee of the criminal process and cannot be confused with evasion. The person under investigation has the right not to give statements, without this being interpreted as a form of evasion from criminal liability [4];

3. *Evasion vs. Obstruction of Justice*: Obstruction of justice is a distinct crime, which involves actions that hinder the conduct of the criminal process, such as influencing witnesses or destroying evidence. Evasion may include such behaviors, but is not limited to them [3];

4. *Evasion vs. Fleeing from the Scene*: Fleeing from the scene of the crime is a par-

ticular form of evasion, but not every escape constitutes evasion. For example, leaving the scene of a road accident is a distinct crime, even if the perpetrator later presents himself to the police [3].

Although the Romanian Criminal Code does not explicitly define evasion, Romanian law contains numerous provisions that punish behaviors associated with it.

The Romanian Criminal Code provides for the possibility of issuing a summons or a warrant for preventive arrest when the person evades criminal prosecution. Evasion may justify more severe preventive measures, such as preventive arrest [9].

Art. 285 of the Romanian Criminal Code [3] criminalizes evasion of sentence, sanctioning the convicted person who hides or leaves the country to avoid imprisonment.

The use of forged documents to avoid identification or detention constitutes a distinct offense, provided under Art. 320-323 of the Romanian Criminal Code.

Art. 338 of the Romanian Criminal Code sanctions leaving the scene of an accident without police permission, considered a form of evasion of criminal liability in the road traffic field.

Refusal to comply with judicial measures (judicial control, obligation not to leave the locality) may lead to the tightening of preventive measures or even their replacement with preventive arrest [9].

The phenomenon of evasion is not specific to Romania, but represents a global problem. The increased mobility of people, the possibility of rapid border crossing and legislative differences between states facilitate the evasion of criminals from criminal liability.

The European Arrest Warrant (EAW) is the main instrument for combating evasion at the European Union level. It allows for the rapid surrender of wanted persons between Member States, eliminating complex extradition procedures [10].

Outside the EU, Romania cooperates with other states through bilateral treaties and through the UN Conventions on transnational crime. Cooperation includes extradition, transfer of proceedings and exchange of information [11].

Although international instruments are effective, there are situations in which states refuse to extradite their own citizens or impose additional conditions. Differences in criminal law, human rights standards and domestic procedures can delay or prevent the surrender of wanted persons.

Modern technology has created new opportunities for evading criminal liability. Criminals can use digital tools to hide their identity, location, or activities.

VPNs allow IP address masking and virtual location in other countries, making it difficult to identify the perpetrators of cybercrimes.

End-to-end encrypted messaging applications make it difficult to intercept communications, even with a court warrant. Although they represent progress for the protection of privacy, they can be used to coordinate criminal activities.

Creating fake accounts, using proxy servers, or generating artificial identities (deepfake) can facilitate evading criminal liability in the online environment.

Although evading criminal liability is a complex phenomenon, located at the intersection of law, psychology, sociology, and technology, technological evolution and global mobility have created new challenges for authorities. In this sense, understanding the concept and its forms are essential for the development of effective prevention and sanctioning policies.

In other words, the phenomenon of evasion of criminal liability manifests itself through a variety of behaviors, which differ depending on the stage of the criminal process, the nature of the crime and the resources available to the person being pursued.

This chapter analyzes the main forms of evasion, both traditional ones and those that emerged in the context of technological evolution.

Fleeing the scene of the crime is one of the most frequent and intuitive forms of evasion. It consists of immediately leaving the place where the crime was committed, in order to avoid identification, detention or ascertainment of the state of affairs by the authorities.

This behavior occurs especially in the case of road traffic offenses, where the perpetrators of accidents leave the scene of the crime to avoid testing for alcohol or psychoactive substances. The Criminal Code specifically punishes leaving the scene of an accident, even if the perpetrator subsequently turns himself in to the police [3].

In other situations, fleeing may occur in the case of violent crimes, thefts or other flagrant acts. Although fleeing in itself is not generally criminalized, it may constitute an aggravating circumstance or may justify the application of more severe preventive measures.

Hiding identity is another subtle but effective form of evasion. This may include refusing to provide real data to the authorities, providing false information regarding name, address or other personal data, using fictitious identities or those of other people [3].

Hiding identity is frequently encountered in the case of economic crimes, illegal migration or organized crime. In some situations, individuals use forged documents to cross borders or to avoid identification during routine checks.

The use of false documents is a complex form of evasion, which involves the use of counterfeit or altered documents to mislead the authorities. The Romanian Criminal Code separately sanctions material forgery, intellectual forgery and the use of forgery [3].

False documents can be used to fraudulently cross borders, obtain official documents (passports, driving licenses), hide criminal records, avoid the execution of sentences or preventive measures.

In the context of globalization, document forgery has become a transnational activity, often carried out by specialized groups. This complicates the identification of persons prosecuted and hinders international cooperation.

Leaving the national territory is one of the most effective forms of evasion, as it involves moving to a state where the Romanian authorities do not have direct jurisdiction. Criminally prosecuted individuals may seek refuge in states that do not have extradition treaties with Romania, that do not extradite their own citizens, where judicial procedures are slow or permissive, and where they may benefit from political or legal protection [10].

In the European Union, this form of evasion has been greatly reduced by the European Arrest Warrant, which allows for the rapid surrender of wanted individuals. However, outside the EU, extradition remains a complex process, subject to strict conditions.

Evasion from serving a sentence is a form of evasion that occurs after a final judgment has been rendered. The convicted person may try to avoid imprisonment by hiding in the country, leaving the national territory, changing identity, using support networks (family, friends, criminal groups).

The Criminal Code explicitly criminalizes this conduct, providing additional penalties for those who evade serving a sentence [3].

In practice, many people with final sentences are put on general or international wanted lists, and their capture requires significant resources from the police and other institutions.

With the development of technology, new ways of evasion have emerged, much more sophisticated than traditional ones. Cybercrime and the use of digital technologies allow criminals to hide their identity, location and activities.

VPNs and TOR networks allow online traffic to be anonymized, IP address hiding and a different location simulation. These tools are used to commit cybercrime, communicate anonymously, and evade digital surveillance.

End-to-end encrypted messaging apps (Signal, WhatsApp, Telegram) make it difficult to intercept communications, even with a court order. Although they are legitimate, they can be used to coordinate criminal activities.

Cryptocurrencies, especially those focused on privacy (Monero, Zcash), allow transactions to be made that are difficult to track. They can be used to finance criminal activities or to hide illegally obtained income.

The forms of evasion from criminal liability are diverse and constantly evolving. If in the past evasion was mainly achieved through physical means (escape, hiding), today technology offers new tools that complicate the work of judicial bodies. Understanding these forms is essential for developing effective prevention and combat strategies.

Evasion from criminal liability is not a random phenomenon, but the result of a complex set of psychological, social, economic and institutional factors. Understanding these causes is essential for the development of effective prevention and control policies. This chapter analyzes the main categories of factors that determine people to avoid criminal liability.

One of the most obvious causes of evasion is the fear of the legal consequences of the act committed. People who have committed serious crimes, such as murder, robbery or drug trafficking, are aware of the severe penalties provided by the law and try to avoid deprivation of liberty at all costs.

Fear is amplified by a multitude of factors, such as criminal records, the risk of recidivism, the perception of prison conditions, social pressure and stigmatization.

Some criminals tend to deny responsibility for the acts committed, considering themselves victims of circumstances or the system. This attitude can lead to avoidance behaviors, such as running away or hiding one's identity.

In the case of crimes committed under the influence of alcohol, drugs or in the context of spontaneous conflicts, perpetrators may act impulsively, fleeing the scene without assessing the consequences. Impulsivity is frequently associated with road traffic offences and acts of violence.

In the case of organised crime, members of groups are often encouraged or forced to evade prosecution in order to protect the organisation. Criminal groups provide shelter, financial resources and false documents, facilitating evasion.

Individuals who fear the reaction of their community or family may try to avoid contact with the authorities. Stigma is particularly strong in small communities, where reputation plays an important role.

Individuals without adequate financial resources may believe that they will not benefit from an effective defence and that the system is against them. This perception may lead to avoidance of legal proceedings.

Individuals from dysfunctional families, with criminal records or negative patterns of behavior, are more likely to adopt avoidance strategies. Lack of family support contributes to the decision to flee or hide.

Economic crimes, such as tax evasion, money laundering or fraud, often involve large sums of money. The perpetrators of these crimes have a strong interest in avoiding criminal liability in order to protect their illegal gains.

Individuals with significant financial resources can hire influential lawyers, purchase false documents, travel quickly to other countries, use advanced technologies for anonymization. These resources increase the chances of successful evasion.

Lengthy criminal proceedings give time to the investigated individuals to evade. Delays can be caused by a multitude of causes such as lack of staff, large volume of files, extended procedural deadlines.

Lack of coordination between the police, prosecutors, courts and other institutions can create loopholes that criminals can exploit. For example, delays in the transmission of warrants or administrative errors can allow people to leave the country.

In some situations, corruption can facilitate evasion by disclosing confidential information, falsifying documents, or even influencing judicial decisions.

Corruption undermines trust in justice and amplifies the phenomenon of evasion. In societies where trust in state institutions is low, people are more likely to avoid contact with authorities. The perception that justice is ineffective or unfair can lead to evasion.

In some communities, certain acts are perceived as "minor" or "acceptable," which reduces the moral pressure on perpetrators and increases the likelihood of evasion. Examples: smuggling, illegal work, petty theft.

Even though the causes of evasion from criminal responsibility are multiple and interconnected, they reflect both individual vulnerabilities and deficiencies in the judicial system and society. Understanding these causes is essential for the development of effective prevention policies that combine legislative, educational and institutional measures.

Evasion of criminal responsibility does not only affect the conduct of an individual case, but also has profound implications for the entire justice system, society and public perception of the authority of the state. The consequences are multiple, interdependent and manifest in both the short and long term.

When individuals manage to evade criminal responsibility, the authority of judicial institutions is affected. The state has a fundamental obligation to ensure the application of the law, and the inability to catch and punish criminals sends a message of weakness.

This perception can lead to a decrease in respect for the law, an increase in the feeling of impunity, and a decrease in citizens' cooperation with the authorities.

Individuals who evade criminal responsibility are often involved in continuous criminal activities. The lack of judicial intervention favors recidivism, because criminals perceive evasion as an effective strategy. Criminals who hide can pose a real danger to the community, especially in the case of violent aggressors, drug traffickers, members of criminal groups, persons involved in sexual crimes.

Evasion facilitates the mobility of criminals and allows the expansion of criminal networks at national and international levels. Individuals who hide can continue to coordinate illegal activities, using digital means or intermediaries.

When citizens notice that criminals are not caught or do not serve their sentences, trust in the justice system decreases. This perception is amplified by the media, which frequently report cases of persons on general or international wanted lists. Lack of trust makes citizens less willing to file complaints, provide statements, collaborate with the police, and participate as witnesses in trials. This phenomenon seriously affects the efficiency of the justice system.

The perception that criminals can get away with it generates a general feeling of insecurity, which affects the quality of life and social cohesion [15].

Evasion can lead to the suspension of trials, postponement of deadlines and prolongation of proceedings. This affects the right to a fair trial, the efficiency of the courts, and judicial costs.

The passage of time affects the quality of evidence – witnesses forget details, physical evidence deteriorates, and digital traces can be erased.

These difficulties can compromise the entire criminal process [9].

Evasion generates significant costs, and the fact that the aggressor is at large can generate fear, anxiety, and post-traumatic stress, especially in the case of violent or sexual crimes.

Victims may feel that the state cannot protect them, which deeply affects the relationship between the citizen and public institutions.

The consequences of evading criminal responsibility are extensive and affect all levels of society. They undermine the authority of the state, compromise public safety, erode trust in justice and generate significant costs. To combat the phenomenon effectively, an integrated approach is needed, combining legislative, institutional, technological and educational measures.

Combating evasion of criminal liability requires a complex, multidisciplinary and coordinated approach. The phenomenon cannot be eliminated by sanctions alone, but by a set of legislative, institutional, technological and social measures.

Criminal legislation must be clear, predictable and adapted to social realities. Periodic updating of the Criminal Code and the Criminal Procedure Code is essential to cover new forms of evasion, especially those in the digital environment.

Art. 285 of the Criminal Code sanctions evasion from the execution of a sentence, but in practice the sentences applied are often reduced. A tightening of sanctions or the introduction of complementary measures (prohibitions, electronic surveillance) could discourage evasion [3].

The legislation could provide for the introduction of more effective preventive measures, such as expanding the use of electronic bracelets, stricter conditions for release under judicial control, and the possibility of digital monitoring of persons suspected of evasion.

Conclusions. Criminal evasion is a complex, constantly evolving phenomenon that requires an integrated and modern approach. Only by combining legislative reforms, institutional strengthening, the use of technology and the involvement of society can the effective application of the law and the protection of the fundamental values of the rule of law be ensured.

The phenomenon of criminal evasion represents one of the most complex challenges of the contemporary justice system. The analysis carried out in this paper highlights the fact that evasion is not a simple act of flight or concealment, but a multifaceted process, influenced by psychological, social, economic, cultural and institutional factors. A deep understanding of this phenomenon is essential for consolidating the authority of the state, for protecting the rule of law and for maintaining public confidence in justice.

Criminal liability, as a fundamental institution of criminal law, loses its effectiveness when individuals manage to evade the application of the law. The principles of legality, proportionality and individual responsibility are seriously affected, and the authority of the state is called into question. Evasion undermines the very idea of justice, as it creates a gap between the legal norm and its effective application.

The forms of evasion are extremely varied and constantly evolving. If in the past traditional methods prevailed – flight, hiding, use of false documents – today technology has opened up new possibilities for avoiding criminal liability. Digital anonymization, encryption of communications, virtual identities and opaque financial transactions represent major challenges for the authorities. Modern crime is increasingly mobile, more sophisticated and harder to detect.

The causes of evasion are deep and interconnected. Fear of consequences, lack of trust in justice, group pressure, institutional deficiencies and legislative vulnerabilities contribute to the perpetuation of the phenomenon. Evasion is not only the result of the

criminal's intention, but also of the weaknesses of the system. Therefore, solutions must be complex and adapted to current realities.

The consequences of evasion are serious and are felt at all levels of society. Public safety is affected, because criminals at large can continue their illegal activities. The judicial system is overburdened, and the economic costs are significant. Citizens' trust in state institutions is declining, and victims of crimes are deprived of moral and material reparation. All this demonstrates that evasion is not only a legal problem, but a social and institutional one.

To effectively combat the phenomenon, an integrated strategy is needed, based on four main pillars:

1. *Legislative reform* – by updating criminal and procedural norms, tightening sanctions for evasion and clearly regulating new forms of crime;

2. *Strengthening institutional capacity* – through inter-institutional cooperation, staff training and reducing the duration of judicial proceedings;

3. *The use of modern technology* – through electronic surveillance, integrated databases, biometric recognition and digital analysis tools.

4. *Education and involvement of society* – through increasing trust in justice, social reintegration programs and community participation in crime prevention.

Finally, evasion of criminal responsibility cannot be completely eliminated, as it is part of the natural dynamics of criminal behavior. However, through coherent, coordinated measures adapted to the current context, the phenomenon can be significantly reduced. An efficient justice system is not one in which there are no crimes, but one in which criminals cannot avoid the consequences of their actions.

Strengthening the state's capacity to prevent and combat evasion is an essential condition for maintaining the rule of law, protecting fundamental social values and guaranteeing a climate of safety for all citizens. Only through an integrated, modern and responsible approach can justice fulfill its role as a guarantor of equity and social stability.

Bibliographical references

1. Dongoroz V. Theoretical Explanations of the Romanian Penal Code. Bucharest: Ed. Academiei R.S.R., 1972, 469 p.
2. Antoniu G. Treatise on Criminal Law. Vol. I. Introduction to Criminal Law. Application of Criminal Law. Bucharest: Ed. Universul Juridic, 2015, 450 p.
3. The Criminal Code of Romania. In: Official Gazette, Part I No.510 of July 24, 2009, in force since February 1, 2014.
4. The Constitution of Romania. Available: https://www.constitutiaromaniei.ro/ (visited 25.03.2026).
5. Basarab M. Criminal Law. General Part. Vol. I. Ed. Lumina Lex, 1997, 480 p.
6. Volonciu N. Treaty on Criminal Procedure. Vol I. Bucharest: Ed. Paideia, 1996, 504 p.
7. Council of Europe. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ECHR). Rome, 4 November 1950. Art. 3.
8. Udroiu M. Criminal Law. General Part. 6th Edition. Bucharest: Ed. C.H. Beck, 2019, 837 p.
9. Romanian Criminal Procedure Code. In: Official Gazette No.486 of 15 July 2010, Art. 202-223.
10. Law No.302 of 26 June 2004 (republished), on international judicial cooperation in criminal matters. In: Official Gazette No. 411 of 27 May 2019.
11. United Nations Convention against Transnational Organized Crime. In: Official Gazette No.813/8, 2002.

CZU 37.0:004.056 **DOI: https://doi.org/10.5281/zenodo.20840881**

PERSONAL DATA PROTECTION IN THE CONTEXT OF THE EDUCATION DIGITALIZATION

Andreea BURUIANA (RUSU),
PhD Candidate,
"Titu Maiorescu" University of Bucharest,
University Assistant, "Ștefan cel Mare" University of Suceava,
Romania
ORCID: 0009-0000-1535-7270

Abstract

The article examines the issue of personal data protection in the context of the accelerated digitalization of education, with a focus on legislative policies at both the national and European levels. In the digital era, educational organizations act as controllers of complex data and are responsible for handling large volumes of personal information belonging to students, pupils, and teaching staff.

The content of this article addresses the types of data collection, the risks associated with the use of websites or digital platforms, and the legal obligations concerning data security and confidentiality. It outlines the main challenges and trends in best practices, with reference to the GDPR, Law No.190/2018, and the National Education Law.

By emphasizing the implementation of data protection measures and the establishment of responsible institutional structures, the article highlights that fundamental human rights must be respected in the digital educational environment. It also underscores the importance of cooperation among educational institutions, legal authorities, and technology companies to prevent potential risks and errors.

Keywords: data protection, education, GDPR, Law No.190/2018, rights.

PROTECȚIA DATELOR CU CARACTER PERSONAL ÎN CONTEXTUL DIGITALIZĂRII EDUCAȚIEI

Abstract

Articolul examinează subiectul protecției datelor personale în contextul digitalizării accelerate a educației, cu accent pe politicile legislative privind dreptul național și dreptul european. În era digitalizării, organizațiile educaționale sunt gestionarii unor date complexe, responsabile de manipularea unei cantități imense de informații personale ale studenților, elevilor și cadrelor didactice.

Conținutul acestui articol include tipuri de colectare a datelor, riscurile utilizării pe site-uri sau platforme digitale și obligațiile legale privind securitatea și confidențialitatea. În acest articol, sunt descrise principalele provocări și tendințele de bune practici, referindu-se la GDPR, Legea 190/2018 și Legea Educației Naționale.

Prin implementarea măsurilor de protecție și crearea unei instituții responsabile, articolul subliniază că drepturile fundamentale ale omului trebuie respectate în mediul educațional digital. Este subliniată importanța colaborării între instituții, autorități legale și companii de tehnologie pentru a preveni astfel de erori.

Cuvinte-cheie: protecția datelor, educație, GDPR, Legea 190/2018, drepturi.

Introduction. In a world shaped by globalization and the transition toward an information society, data protection is regarded as a fundamental starting point for the rights and freedoms of every individual. The process of digital transformation in education goes

beyond digital platforms and online tools—the transformative nature of this context entails a fundamental restructuring of how students, teachers, institutions, and technology service providers interact with one another.

The constant flow of personal data generated through daily interactions in e-learning environments, educational management systems, and collaborative applications presents both significant opportunities and substantial threats to privacy. This digital environment requires educational institutions to adopt robust measures to protect data in compliance with European and national legal frameworks and the ethical standards governing the educational process. Failure to meet these responsibilities may result in serious reputational and operational damage for schools and universities, thereby necessitating a proactive and responsible approach (Art. 83 of the GDPR and Art. 13 of Law No.190/2018).

The digitalization of education has brought numerous benefits, including improved access to information, enhanced collaboration, and innovation in teaching. At the same time, as the use of increasingly complex and pervasive digital platforms, applications, and databases expands within educational institutions, this transition also raises new concerns regarding the protection of personal data. Therefore, compliance with data protection legislation is essential to ensure that students, pupils, and teachers can effectively exercise and safeguard their rights.

Discussions and results obtained. I. Legislative Framework on the Protection of Personal Data. **1.1. General Data Protection Regulation (GDPR).** Regulation (EU) 2016/679 (GDPR) is the primary legal framework governing the processing of personal data at the European level, establishing principles and obligations to protect the personal data of European Union citizens. Among its key provisions are the fundamental principles governing the lawfulness, fairness, and transparency of processing, as well as purpose limitation, data minimization, and data protection (Art. 5).

Furthermore, the GDPR enshrines an extended set of rights for data subjects, including the right to information, access, rectification, and erasure (the "right to be forgotten") (Arts. 12–23). Data controllers are required to ensure that relevant entities (including educational institutions) implement appropriate security measures, maintain records of processing activities, and provide notifications to supervisory authorities and affected individuals in the event of a data breach (Arts. 24–43, Art. 33).

In Romania, the provisions of the GDPR are supplemented and further specified by Law No. 190/2018, which introduces additional rules concerning the protection of personal data in specific contexts, including the field of education.

1.2. National Legislation. The digitalization of education in Romania emerged as a response to the need to modernize the education system. This process was significantly accelerated by the COVID-19 pandemic, when, in 2020, educational institutions rapidly adopted digital solutions to ensure continuity of instruction. Digitalization has led to a substantial increase in the use of online platforms, educational applications, and digital tools that facilitate interaction between teachers and students.

Institutions in Romania face multiple challenges in protecting personal data. These include insufficient financial and technical resources needed to implement adequate security solutions, as well as resistance to change among teaching staff and administrative personnel. At the same time, low levels of awareness and training among teachers and students regarding data protection contribute to increased exposure to risks.

II. Types of Data Collected in Education. The digitalization of education has generated a large number of new categories of personal information, in addition to traditional

datasets, and the collection and processing of such data impose additional confidentiality requirements. As a result, access logs on e-learning platforms, location data generated by mobile applications, usage preferences, online test results, and written and audio-video communications within school forums and virtual conferences constitute complex information databases. Similarly, data produced through the analysis of students' and teachers' digital behavior also pose risks of accidental or abusive exposure [1, p.6].

Most importantly, transferring such data to third parties, particularly private providers of educational platforms, requires institutions to pay closer attention to legal compliance and to ensure that data transfers are carried out in accordance with applicable regulations, while maintaining continuous oversight of the managed information. In the digital educational environment, the following data are commonly collected: name, surname, personal identification number, contact details, academic results, attendance records, behavior data, biometric data (when advanced technologies are used), and even personal preferences. E-learning platforms often involve data transfers to third-party providers, which further increases privacy risks [1, p.6].

III. Principles of Data Processing in Education. The processing of personal data in the educational environment must strictly comply with a set of fundamental principles designed to protect the rights of data subjects and to ensure a climate of trust in the use of digital technologies.

The first essential principle is the lawfulness of data processing. Any operation involving the collection, storage, or use of personal data must be based on a clear legal ground, as provided by Article 6 of the GDPR. Depending on the context, this legal basis may include the explicit consent of the data subject (for example, for the use of certain educational platforms), the performance of a contract (such as enrollment in studies or access to educational services), compliance with a legal obligation of the institution, or the existence of a legitimate interest that does not override the fundamental rights of pupils, students, or teaching staff.

Another fundamental principle concerns purpose limitation and data minimization. Educational institutions must clearly define the purpose for which personal data are required and collect only the information strictly necessary to achieve that purpose. This helps prevent excessive data collection or the use of data for purposes other than those originally declared, thereby protecting individuals' privacy.

Transparency and full information of data subjects constitute another essential obligation. According to Articles 12 and 13 of the GDPR, pupils, students, parents, and teaching staff must be informed in a clear and accessible manner about the purposes of processing, the retention period, the recipients of the data, and the rights they hold (such as access, rectification, or erasure). Only in this way can a relationship of trust between the institution and data subjects be established [2, pp.43-49].

At the same time, data security must be a permanent priority for any educational institution. The implementation of appropriate technical and organizational measures—from data encryption to clear access and data management policies—aims to prevent unauthorized access, loss, or compromise of personal data. These requirements are set out both in Article 32 of the GDPR and in national legislation (Article 20 of Law No.190/2018).

Thus, the processing of personal data in education cannot be separated from compliance with the principles established by the GDPR: lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity, and confidentiality. Only by applying these principles can the effective protection of the rights of all actors involved in the digitalized educational process be ensured.

IV. Risks and Challenges of Digitalization. With the expansion of digitalization in education, a range of specific risks related to the protection of personal data emerges, which must be managed responsibly and professionally by all involved institutions.

One of the most significant risks is data breaches and security incidents. These may result from both technical failures in IT infrastructure and from human error, negligence, or insufficient staff training. Such incidents may lead to the exposure, alteration, or even loss of large volumes of personal data, with serious consequences for both organizations and data subjects. Under Article 33 of the GDPR, any personal data breach must be promptly reported to the National Supervisory Authority for Personal Data Processing (ANSPDCP), and in certain cases, affected individuals must also be informed. Transparency and rapid response are essential for mitigating the impact and maintaining trust in educational services [3, p.60].

Another major risk is automated profiling of students and excessive surveillance. The use of algorithms to analyze behavior or academic performance may lead to discrimination, stigmatization, or violations of individuals' privacy, contrary to Article 22 of the GDPR. It is essential that institutions avoid exceeding the limits regarding data collection and use, ensuring that each profiling process complies with ethical and legal principles.

The transfer of data to third parties, particularly to e-learning platforms operated by providers outside the European Union, involves additional risks. Such transfers require the implementation of appropriate safeguards for data protection, in accordance with Articles 44–50 of the GDPR. A lack of effective control over these transfers may result in loss of control over data and exposure to jurisdictions with different levels of protection.

Practical examples from Romania and the European Union show that negligence or insufficient training among educational staff are frequent contributors to security incidents. Among the most common risks are security breaches caused by unauthorized access or data loss, excessive profiling and unjustified storage of sensitive data, lack of control over data transfers to external platforms, and improper use of images or biometric data for non-educational purposes. These issues highlight the need for continuous staff training and the implementation of strict policies on security and transparency in the processing of personal data.

V. Protective Measures and Best Practices. To reduce risks related to the protection of personal data in education and to ensure compliance with European standards, institutions must implement a series of clearly defined protective measures and best practices.

First, adopting clear internal policies and procedures is essential. Each educational institution must develop and implement formal data protection policies, appoint a Data Protection Officer (DPO) in accordance with Article 37 of the GDPR, and provide periodic training for all staff members. Regular training helps reduce human error, increases awareness, and fosters an organizational culture oriented toward protection and responsibility.

In addition, digital projects with a significant impact on privacy require a thorough assessment of the associated risks. The Data Protection Impact Assessment (DPIA), provided for in Article 35 of the GDPR, helps identify and proactively manage potential risks, thereby safeguarding the rights of data subjects from the earliest stages of designing new digital solutions.

Auditing and continuous monitoring of IT systems also represent essential measures. Periodic security audits, access control mechanisms, regular review of access policies, and constant monitoring of activities involving personal data contribute to the early

detection of vulnerabilities and the prevention of security incidents [4, p.32].

Proper information and the obtaining of explicit consent from data subjects remain fundamental requirements for compliant processing. Data subjects must receive clear information regarding how their data are used, and where necessary, their consent must be obtained and documented in accordance with Article 7 of the GDPR and Article 8 of Law No.190/2018.

Finally, cooperation with supervisory authorities is mandatory. Institutions have the duty to promptly notify any security incident to the National Supervisory Authority for Personal Data Processing (ANSPDCP), to cooperate in investigations, and to respond promptly to requests concerning the exercise of data subjects' rights. Compliance with these requirements, together with the use of GDPR-compliant digital platforms, proper information of all participants, and regular security audits, strengthens trust in the digital educational environment and protects the fundamental interests of all stakeholders involved [5, pp.187-188].

Conclusions. The digitalization of education is an irreversible process, significantly impacting how knowledge is generated, transmitted, and protected. This evolution brings undeniable benefits, such as expanded access to educational resources, the stimulation of pedagogical innovation, and the facilitation of international collaboration. At the same time, digitalization entails assuming greater responsibility for protecting the personal data of all participants in the educational process.

Strict compliance with the applicable legal framework (GDPR, Law No.190/2018, and the National Education Law), along with the implementation of effective technical and organizational security measures, is no longer optional but is essential to creating an environment of trust, safety, and mutual respect. Cooperation among educational institutions, competent authorities, and digital service providers must be grounded in transparency, accountability, and a firm commitment to protecting data confidentiality, with the primary aim of ensuring the well-being of pupils, students, teaching staff, and society as a whole [6, p.5].

The protection of personal data in the context of educational digitalization goes beyond a mere legal obligation, representing a moral duty to ensure a safe educational environment. The integration of new technologies must be based on responsibility and respect for the fundamental rights of data subjects.

Bibliographical references

1. Ghinea R. Provocările digitalizării educației: riscuri privind protecția datelor personale. În: Revista Română de Dreptul Educației, 2021, p.6.
2. Pantilimon C. Protecţia datelor şi provocările aduse de utilizarea noilor tehnologii. În: Revista română pentru protecţia şi securitatea datelor cu caracter personal, (02), 2023, pp.43-49.
3. Băjan M.D. Securitatea cibernetică în instituțiile publice. Student Papers on Smart Cities and E-Governance (SPoSC&EGOV) Repository, 2(1), 2024, p.60.
4. ENISA – Good Practices for the Security of Personal Data in Education, 2020, p.32.
5. Dumitrescu M. După trei ani, GDPR nu este încă înțeles şi respectat de majoritatea operatorilor români, inclusiv de autorități. Curierul judiciar, 20(4), 2021, pp.187-188.
6. Antoce S. Privacy Protection in the Era of Smart Cities. În: Analele ştiințifice ale Universității "Alexandru Ioan Cuza" din Iași, Științe Juridice, 2025, p.5.

CZU: 343.98:004.056.5 **DOI: https://doi.org/10.5281/zenodo.20841504**

PREVENTION OF CRIME IN THE DIGITAL ERA: CHALLENGES, MODERN TOOLS AND INSTITUTIONAL COOPERATION

Mihai ȘTEFĂNOAIA,
University Lecturer,
Faculty of Law and Administrative Sciences,
"Ștefan cel Mare" University of Suceava,
Romania
ORCID: 0000-0002-7163-4436

Abstract

The prevention of crime in the digital era represents a major challenge for contemporary legal systems, in the context of the rapid expansion of information technologies and the increasing dependence on the online environment. The development of digital infrastructures has facilitated the emergence of complex forms of crime, such as cyber fraud, identity theft, and cyberattacks, characterized by cross-border mobility and difficulties in identifying perpetrators.

This paper highlights the main challenges associated with preventing these phenomena, including user anonymity, the diversity of jurisdictions, and the rapid evolution of criminal techniques. In this context, prevention becomes essential and requires the use of modern tools such as artificial intelligence, data analysis, and early risk detection mechanisms.

A central element of the preventive approach is institutional cooperation, both at national and international levels. Collaboration between public authorities, the private sector, and international organizations contributes to efficient information exchange and the development of integrated response strategies.

In conclusion, the prevention of digital crime requires a multidimensional approach based on innovation, education, and institutional cooperation, aimed at strengthening security and protecting users.

Keywords: digital crime, prevention, cybersecurity, artificial intelligence, institutional cooperation, cybercrime, data protection.

PREVENIREA CRIMINALITĂȚII ÎN ERA DIGITALĂ: PROVOCĂRI, INSTRUMENTE MODERNE ȘI COOPERARE INSTITUȚIONALĂ

Abstract

Prevenirea criminalității în era digitală constituie o provocare majoră pentru sistemele juridice contemporane, în contextul extinderii accelerate a tehnologiilor informaționale și al creșterii dependenței de mediul online. Dezvoltarea infrastructurilor digitale a facilitat apariția unor forme complexe de criminalitate, precum frauda informatică, furtul de identitate sau atacurile cibernetice, caracterizate prin mobilitate transfrontalieră și dificultăți de identificare a autorilor.

Lucrarea evidențiază principalele dificultăți asociate prevenirii acestor fenomene, inclusiv anonimatul utilizatorilor, diversitatea jurisdicțiilor și ritmul rapid de adaptare a tehnicilor infracționale. În acest context, prevenirea devine esențială și presupune utilizarea unor instrumente moderne, precum inteligența artificială, analiza datelor și mecanismele de detecție timpurie a riscurilor.

Un element central al demersului preventiv îl reprezintă cooperarea instituțională, atât la nivel național, cât și internațional. Colaborarea între autorități publice, sectorul privat și organizațiile internaționale contribuie la schimbul eficient de informații și la dezvoltarea unor strategii integrate de răspuns.

În concluzie, prevenirea criminalității digitale necesită o abordare multidimensională, bazată pe inovație, educație și cooperare, în vederea consolidării securității și protejării utilizatorilor.

Cuvinte-cheie: criminalitate digital, prevenire, securitate cibernetică, inteligență artificială, cooperare instituțională, criminalitate informatică, protecția datelor.

Introduction. The digital era has generated unprecedented opportunities for societal development, facilitating rapid access to information, global communication, and the optimization of economic and administrative processes. At the same time, this profound transformation has created a favorable environment for the emergence of new forms of crime, characterized by complexity, adaptability, and a high capacity for concealment. Offenses such as cyber fraud, cyberattacks, identity theft, and online exploitation have become increasingly common phenomena, difficult to control through traditional means [1].

Digitalization has not only transformed the tools used by offenders but also the structure and dynamics of criminal activity, shifting a significant portion of illicit conduct into the virtual space. In this context, geographical barriers become irrelevant, allowing offenders to operate simultaneously across multiple jurisdictions, which significantly complicates the intervention of authorities [2]. Furthermore, the relative anonymity provided by the online environment, along with the use of advanced technologies such as encryption and decentralized networks, makes the identification and prosecution of perpetrators more difficult [3].

Another relevant aspect is the increasing vulnerability of users, driven by a lack of digital literacy and constant exposure to cyber risks. Phishing attacks, information manipulation, and the misuse of personal data highlight the fact that users often become the weakest link in the digital security chain [4]. At the same time, the development of emerging technologies such as artificial intelligence and the Internet of Things (IoT) creates new challenges, offering both opportunities for prevention and additional tools for criminal activities [5].

In this context, crime prevention can no longer rely solely on reactive approaches but requires a proactive and integrated strategy that combines advanced technological tools with appropriate legal mechanisms and effective public policies. The use of data analysis, artificial intelligence, and predictive systems enables the early identification of risks and intervention before crimes occur [6].

Therefore, this paper aims to analyze the main challenges of crime prevention in the digital era, highlight the role of modern tools, and emphasize the importance of institutional cooperation in developing effective strategies to combat contemporary criminal phenomena.

Discussions and result obtained. I. Challenges of Crime Prevention in the Digital Era (Extended). 1.1. The Transnational Nature of Crime. Digital crime transcends national borders, which complicates jurisdictional enforcement and cooperation between authorities [2]. The lack of legislative harmonization and differences between legal systems hinder rapid and effective interventions, especially in cases involving multiple jurisdictions simultaneously. In many situations, offenders operate from states with more permissive regulations or limited law enforcement capacity, creating so-called “digital safe havens” [2].

Moreover, international judicial cooperation procedures, such as mutual legal assistance or extradition, are often slow compared to the speed at which cybercrimes are committed. This temporal gap reduces the effectiveness of interventions and facilitates the rapid disappearance of digital evidence [6]. In this context, crime prevention requires not only technical tools but also flexible institutional mechanisms and efficient international agreements capable of responding swiftly to cross-border threats.

1.2. Anonymity and the Difficulty of Identifying Offenders. Technologies such as virtual private networks (VPNs), encryption, and dark web infrastructures facilitate the concealment of offenders’ identities, reducing the effectiveness of traditional investigative methods [3]. These tools allow users to mask their location and communicate secure-

ly, significantly complicating the work of law enforcement agencies.

In addition, the use of cryptocurrencies in illegal transactions contributes to increased financial anonymity, making it difficult to trace money flows and identify ultimate beneficiaries [5]. This combination of technological and financial anonymity generates major challenges for judicial systems, which must develop new investigative methods based on digital analysis and inter-institutional cooperation.

Furthermore, the difficulty in identifying offenders also affects the preventive dimension, as the perceived lack of risk of sanction may encourage criminal behavior in the online environment [4].

1.3. Rapid Technological Evolution. The tools used by offenders are constantly evolving, creating a gap between the capabilities of authorities and the sophistication of criminal methods [4]. The emergence of new technologies, such as artificial intelligence, automation, and the Internet of Things (IoT), expands the attack surface and provides new opportunities for illicit activities [5].

For instance, the use of artificial intelligence in generating false content (deepfakes) or automating cyberattacks raises serious challenges for detection and prevention. At the same time, increasingly complex digital infrastructures are becoming more vulnerable to coordinated attacks, with significant implications for national and economic security [6].

This rapid evolution requires continuous adaptation of prevention strategies, including investment in specialist training, the development of advanced detection technologies, and the constant updating of the legal framework. Without an adequate response, the gap between technological advancement and institutional capacity may lead to the escalation of criminal activity in the digital environment.

II. Modern Prevention Tools. 2.1. Artificial Intelligence and Predictive Analytics. The development of artificial intelligence (AI) technologies has opened new perspectives in crime prevention, enabling a shift from a reactive to a proactive approach. Machine learning algorithms can analyze large volumes of data (big data) to identify behavioral patterns, correlations, and risk indicators that would be difficult to detect using traditional methods [5].

Predictive analytics allows the anticipation of potential criminal activities by assessing probabilities based on historical data and suspicious behavior. These tools are used, for example, in detecting financial fraud, identifying cyberattacks, or monitoring suspicious online activities [6].

However, the use of artificial intelligence also raises ethical and legal concerns, such as the risk of algorithmic bias or violations of privacy, which necessitate the development of appropriate regulatory frameworks [7].

2.2. Digital Surveillance and Cybersecurity. Modern digital surveillance systems represent a key pillar in preventing crime in the online environment. These include technologies for monitoring data traffic, intrusion detection and prevention systems (IDS/IPS), and cyber threat intelligence platforms [5].

Furthermore, the implementation of high cybersecurity standards at institutional and organizational levels contributes to reducing vulnerabilities exploited by offenders. Measures such as multi-factor authentication, data encryption, and security audits are essential for preventing unauthorized access [6].

Cybersecurity incident response teams (CERTs) also play a crucial role by coordinating responses to cyberattacks and facilitating rapid information exchange between institutions [5].

2.3. Digital Education and Public Awareness. Crime prevention is not limited to

institutional intervention but also involves empowering users. Digital education plays a fundamental role in reducing individual vulnerabilities by developing the skills necessary to identify risks and adopt safe online behaviors [4].

Awareness campaigns regarding online fraud, data protection, and responsible use of technology contribute to reducing the number of victims of cybercrime. In this sense, prevention becomes a participatory process in which citizens act as active agents of digital security [6].

Moreover, integrating digital education into educational systems and professional training programs represents a long-term investment in reducing risks associated with the online environment [7].

2.4. Public–Private Cooperation and Information Sharing. A key element of modern prevention is cooperation between the public and private sectors. Technology companies control critical infrastructures and large volumes of data, placing them in a strategic position to detect emerging threats [8].

Public–private partnerships facilitate information sharing, the development of technological solutions, and the implementation of effective prevention mechanisms. For example, collaboration between law enforcement agencies and digital service providers enables faster identification of suspicious activities and limits their impact [5].

At the same time, such partnerships must respect data protection principles and fundamental rights in order to prevent abuses and maintain public trust [7].

III. National and International Legal Framework in Preventing Digital Crime. **3.1. National Legal Framework**. At the national level, the prevention and combating of cybercrime are regulated through a set of legal norms that reflect both internal needs and obligations assumed at the European and international levels. In Romania, the main legislative instrument is the Criminal Code, which criminalizes specific acts related to the digital environment, such as illegal access to a computer system, illegal interception of computer data, data interference, and system fraud. These provisions ensure the legal framework necessary for sanctioning illicit behavior in cyberspace.

An important role is also played by Law No.161/2003, which represented an early step in regulating cybercrime, introducing provisions concerning the prevention and combating of offenses committed through information systems [9].

In the field of cybersecurity, Romania has implemented European requirements through Law No.362/2018, which establishes obligations for operators of essential services and digital service providers in order to prevent and manage security incidents [10]. This law contributes to strengthening the resilience of critical infrastructures and to developing a coherent prevention system.

The protection of personal data, essential in preventing digital crime, is ensured through the application of the General Data Protection Regulation (GDPR), complemented by national legislation. This legal framework contributes to limiting unauthorized access to data and reducing the risks associated with the misuse of personal information.

In addition, institutions such as the National Cyber Security Directorate and specialized structures within the Ministry of Internal Affairs play a key role in implementing prevention policies and managing cyber incidents, in cooperation with national and international partners.

3.2. International Legal Framework. At the international level, the prevention of digital crime is supported by the existence of legal instruments designed to facilitate cooperation between states and ensure a minimum level of legislative harmonization. A fundamental document in this regard is the Convention on Cybercrime, also known as the

Budapest Convention, which establishes common standards regarding the criminalization of offenses, investigative procedures, and mechanisms for international cooperation [11].

This convention provides states with a unified framework for action, facilitating the rapid exchange of information and cooperation in the investigation of transnational crimes. Its importance is reinforced by the global nature of cybercrime, which requires coordinated responses at the international level.

In addition, organizations such as the United Nations and Interpol contribute to the development of global prevention policies and to the coordination of efforts aimed at combating digital crime, providing operational and analytical support to Member States.

At the level of the European Union, the legal framework is strengthened through directives and regulations addressing cybersecurity and data protection. Directive (EU) 2016/1148 on the security of network and information systems (NIS Directive) requires Member States to adopt appropriate measures for the prevention and management of cyber risks. Furthermore, the General Data Protection Regulation (GDPR) contributes to crime prevention by strengthening personal data protection and increasing the accountability of economic operators.

Moreover, reports and analyses conducted by European agencies, such as Europol, provide up-to-date insights into the evolution of cyber threats and support the development of effective prevention strategies.

Conclusions. Crime in the digital era represents a complex and dynamic phenomenon, deeply influenced by technological developments, which requires a fundamental rethinking of prevention strategies. The present analysis highlights that traditional methods of combating crime are no longer sufficient in the current context, characterized by transnationality, anonymity, and technological sophistication.

A first essential aspect is the need to adopt a proactive approach, based on risk anticipation and the use of modern tools such as artificial intelligence and predictive analytics. These technologies enable the early identification of threats and intervention before criminal acts produce their effects, thereby increasing the efficiency of prevention systems.

At the same time, the legal framework plays a decisive role in ensuring an adequate response to the challenges of the digital environment. Both national and international regulations, such as the Budapest Convention, provide a solid legal basis for the criminalization and investigation of cyber offenses. However, their effectiveness depends on the continuous updating of legal norms and the harmonization of legislation across states.

Another central element is institutional cooperation, both at the national and international levels. Collaboration between authorities, international organizations, and the private sector is essential for the rapid exchange of information and the development of common prevention strategies. In the absence of such cooperation, the transnational nature of digital crime significantly limits the effectiveness of interventions.

Furthermore, the role of digital education cannot be overlooked. Increasing users' awareness and developing digital competencies contribute to reducing vulnerabilities and preventing a significant number of cyber offenses.

In conclusion, preventing crime in the digital era requires an integrated approach that combines technology, legal frameworks, and institutional cooperation. Only through continuous adaptation and effective collaboration can an adequate level of security in the digital environment be ensured and the risks associated with emerging forms of crime be reduced.

Bibliographical references

1. Wall D.S. Cybercrime and Society (3rd ed.). Sage Publications. 2015.
2. Brenner S.W. Cybercrime: Criminal Threats from Cyberspace. Praeger. 2010.
3. Yar M. Cybercrime and Society (2nd ed.). Sage Publications. 2013.
4. McGuire M., & Dowling S. Cybercrime: A Review of the Evidence. UK Home Office. 2013.
5. European Union Agency for Cybersecurity (ENISA). ENISA Threat Landscape Report. 2022.
6. OECD. Digital Security Risk Management for Economic and Social Prosperity. 2020.
7. European Commission. Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). 2021.
8. Europol. Internet Organised Crime Threat Assessment (IOCTA). 2023.
9. Romania, Law No.161/2003 on Certain Measures to Ensure Transparency in the Exercise of Public Dignities, Public Functions and in the Business Environment, and for the Prevention and Sanctioning of Corruption. In: Official Gazette of Romania, Part I, No. 279, of 21 April 2003.
10. Romania. Law No.362/2018 on Ensuring a High Common Level of Security of Network and Information Systems. In: Official Gazette of Romania, Part I, No.21, of 9 January 2019.
11. Council of Europe. (2001). Convention on Cybercrime (Budapest Convention) (ETS No.185). Budapest, 23 November 2001. Strasbourg: Council of Europe. Available: https://www.coe.int/en/web/cybercrime/convention-on-cybercrime?utm_source=chatgpt.com.

CZU 343.1 DOI: https://doi.org/10.5281/zenodo.20841615

THE JUDICIAL EXPERIMENT AS A FORM OF APPLYING THE EXPERIMENTAL METHOD IN CRIMINAL PROCEEDINGS

Oxana CIUDIN,
PhD Candidate, Moldova State University,
Assistant Lecturer, Faculty of Law and Public Administration,
"Bogdan Petriceicu Hasdeu" University Center,
Technical University of Moldova
ORCID: 0000-0002-5990-478X

Abstract

The judicial experiment constitutes an essential method of investigation within criminal proceedings, distinguished by its specific character deriving from the use of experimental actions aimed at verifying and clarifying existing information, as well as identifying new circumstances of the offense. This form of application of the experimental method enables criminal investigation officers (prosecutors) to examine criminal acts within a controlled framework, to reproduce the conditions under which the investigated event occurred, and to directly observe the manner in which the actions or phenomena associated with the offense unfolded. Within the judicial experiment, the criminal investigation officer (prosecutor) is afforded the opportunity not only to confirm or refute previously formulated investigative versions, but also to obtain new evidence relevant to the resolution of the criminal case.

Through this approach, the judicial experiment emerges as a highly valuable cognitive instrument, contributing to the clarification of the factual circumstances of the case, to the substantiation of investigative conclusions, and to the safeguarding of an objective and rigorous criminal process. Accordingly, the judicial experiment integrates both empirical and theoretical knowledge, representing an indispensable methodological component of the system of criminal investigation, which substantiates the relevance and contemporary significance of the present study.

Keywords: judicial experiment, criminal proceedings, criminal offense, experimental method, criminal investigation measure, verification, clarification, reproduction, reconstruction, circumstances, events, phenomena, evidence, evidentiary material, tactical procedure.

EXPERIMENTUL JUDICIAR: FORMĂ DE UTILIZARE A METODEI EXPERIMENTALE ÎN CADRUL PROCESULUI PENAL

Abstract

Experimentul judiciar reprezintă o metodă esențială de investigare în procesul penal, având caracter specific prin utilizarea acțiunilor experimentale menite să verifice și să clarifice informațiile existente, precum și să identifice noi circumstanțe ale infracțiunii. Această formă de aplicare a metodei experimentale permite ofițerilor de urmărire penală (procurorilor) să cerceteze faptele infracționale într-un cadru controlat, să reproducă condițiile evenimentului investigat și să observe direct modul de desfășurare a acțiunilor sau a fenomenelor asociate infracțiunii. În cadrul experimentului judiciar, ofițerul de urmărire penală (procurorul) are posibilitatea nu doar de a confirma sau infirma versiunile formulate anterior, ci și de a obține probe noi relevante pentru soluționarea cauzei penale.

Prin această abordare, experimentul judiciar se constituie într-un instrument cognitiv de mare valoare, contribuind la claritatea circumstanțelor cauzei, la fundamentarea concluziilor urmăririi penale și la asigurarea unui proces penal obiectiv și riguros. Astfel, experimentul judiciar integrează atât cunoașterea empirică, cât și cea teoretică, fiind o componentă metodologică indispensabilă în sistemul de investigație penală, fapt care determină importanța și actualitatea studiului realizat.

Cuvinte-cheie: experiment judiciar, proces penal, infracțiune, metodă experimentală, acțiune de urmărire penală, verificare, precizare, reproducere, refacere, circumstanțe, evenimente, fenomene, probă, probatoriu, procedeu tactic.

Introduction. The establishment and consolidation of a democratic and rule-of-law state are inseparably linked to the restructuring of criminal investigation bodies and the overall improvement of their activity. Criminal procedural legislation must correspond to European standards and contribute to the recognition and safeguarding of fundamental human rights and freedoms. An essential task of criminal proceedings is to ensure the conduct of a prompt and comprehensive investigation, as well as the proper examination of criminal cases before the courts, the improvement of the procedure for carrying out criminal investigation measures, the configuration of an optimal system thereof, and the enhancement of the efficiency of their application.

The process of crime investigation is conventionally interpreted as a specific cognitive activity — a process of knowledge as a whole, aimed at establishing the truth concerning the existence of facts and the circumstances of the events that have occurred. The process of discovering the truth within criminal proceedings is carried out in the form of procedural proof, the foundation of which is constituted by materialist dialectics, the principles of criminal procedure, the logic of cognition, as well as the methods and techniques of criminalistics.

The process of establishing the truth in a criminal case encompasses both intellectual activity and the concrete actions of the criminal investigation officer, as provided by criminal procedural legislation. Intellectual activity consists in solving certain tasks and clarifying issues that require elucidation [9, p. 42].

According to the opinion of author Stelmach V.Iu., criminal procedural legislation encompasses 15 distinct criminal investigation measures, as well as an even greater number of their subtypes. These measures are positioned equally within the hierarchy of evidentiary tools; however, some are applied systematically, while others are employed only in rare or exceptional situations, requiring thorough preliminary preparation, involving considerable time expenditure, and, by their very nature, allowing the confirmation or refutation of the key investigative version [20, p. 164].

The detection and investigation of criminal offenses, understood as the activity of establishing the veracity of the event that occurred, is carried out through the performance, in the order prescribed by law and in a rational sequence, of criminal investigation measures and special investigative activities, implemented through scientific-technical and tactical procedures, as well as criminalistics methods. Among the effective means of obtaining new evidence, as well as verifying and clarifying already obtained evidentiary material by conducting experimental actions under artificially created conditions, is the judicial experiment as a procedural act.

The necessity of conducting an experiment is determined not by the type of offense committed, but by the concrete circumstances of the criminal case; therefore, it is not possible to identify specific categories of crimes in which this criminal investigation measure must be mandatorily performed [4, p. 819].

The judicial experiment represents one of the criminal investigation measures and is regulated by the provisions of Article 123 of the Criminal Procedure Code of the Republic of Moldova, [15]. Pursuant to the aforementioned legal norm, law enforcement bodies and officials directly responsible for conducting criminal investigations are entitled to perform the judicial experiment for the purpose of verifying or clarifying information that

may be used in the investigation of a criminal offense during the pre-trial phase, and in certain cases — also during the judicial examination stage [3, pp. 240-251].

The judicial experiment comprises a set of actions reflecting the circumstances in which the offense was committed, the environment in which the criminal act occurred, as well as other conditions related to the events produced at the moment of the commission of the offense. This type of criminal investigation measure presupposes a sequence of operations aimed at visualizing and documenting the circumstances associated with the commission of the offense, its contextual environment, and other aspects accompanying the event that took place at the time of the criminal act.

The essence of this investigative measure lies in the performance of special experimental actions. The distinction between the special experimental procedures carried out within the framework of the judicial experiment and experiments conducted under laboratory conditions resides in the fact that, during the investigation of the offense, the procedural action is performed by an officially authorized person endowed with the legal competence to conduct such an action within the criminal case investigation.

The special experimental actions are carried out in a predetermined order with the aim of obtaining information of probative value. As a rule, this criminal investigation measure is performed at a later stage of the criminal investigation, when the criminal investigation officer/prosecutor possesses a certain amount of information necessary for verifying data concerning the persons who committed the offense, the manner of its commission, the mechanism of trace formation, and other information directly related to the offense and its participants. The judicial experiment represents one of the means of verifying information held by the criminal investigation body, possessing evidentiary value [18, pp. 10-12].

The experiment, as a method of evidence verification in criminal cases, is widely used during criminal investigation. The verification of evidence based on the experiment involves experimentally establishing the possibility or impossibility of the existence of a certain fact under specific circumstances determined by the content of the evidence [16, p. 127].

Methodological basis of the research. The preparation of the article involved the use of scientific methods specific to legal and criminalistics research. First, the method of theoretical analysis was applied to examine specialized literature and relevant judicial practice in order to identify the characteristics and particularities of the judicial experiment. Second, the synthesis method was used to integrate theoretical and practical information, highlighting the role and functions of the judicial experiment within criminal proceedings.

Furthermore, comparative methods were employed to correlate different approaches of researchers and practitioners regarding the application of the experimental method and to determine the conceptual and procedural particularities of the judicial experiment. The logical method was used to establish causal relationships between hypotheses, investigative versions, evidence, and conclusions in criminal proceedings, while the systemic method enabled the judicial experiment to be highlighted as an integral component of the overall investigative process.

By combining these methods, the research aimed to ensure scientific rigor, objectivity, and coherence of the analysis, providing a solid foundation for the conclusions formulated regarding the application of the judicial experiment as a cognitive and verification instrument within criminal proceedings.

Discussions and results obtained. The judicial experiment represents an important criminal investigation measure, the essence of which lies in the performance of experimental actions involving the observation of the development of a phenomenon that imi-

tates the circumstances of the investigated offense under specific and controlled conditions, allowing their repetition multiple times [21, p. 183].

According to the opinion of Gheorghiță M., the experiment within criminal investigation proceedings is "...a powerful means of psychological influence on participants, because in most cases its results demonstrate the possibility or impossibility of the existence of certain events and phenomena" [2, p. 673].

In accordance with the interpretation of criminal procedural legislation, the judicial experiment consists in the reproduction of the actions, environment, or other circumstances of a previously occurring event. In this context, Ramazanov Z.*A. argues that the main characteristic of this criminal investigation measure — its experimental nature — is partially absent when comparing the judicial experiment with the closest investigative action, namely the verification of statements at the scene. The essence of the latter also lies in the fact that the previously interviewed person reproduces, at the location of the event, the circumstances of the investigated occurrence, indicates objects, documents, or traces relevant to the criminal case, and demonstrates certain actions [19, p. 106].

It is noteworthy, according to Didenko N.S., the judicial experiment is carried out through the use of the experimental method, whose primary foundation consists of performing experimental actions aimed at determining the authenticity of evidence or refuting it, as well as establishing new circumstances relevant to the criminal case. The admissibility of evidence obtained in this manner is ensured by compliance with the procedural norms and conditions governing the conduct of this investigative measure [22, p. 25].

Proper planning and conduct of criminal investigation measures, including the judicial experiment, largely determine the overall success and effectiveness of criminal investigation. This is primarily due to the fact that the evidentiary basis will be constituted, first and foremost, by accurately and rigorously prepared official records (protocols) of the performed investigative measures, and only subsequently by their results, whether positive or negative. In practice, according to the opinion of Ișcenko D.P. and Fisakov M.Iu., law enforcement representatives do not always fully exploit the potential of the judicial experiment; moreover, during its execution, errors are frequently committed that hinder the effective use of the results obtained in the investigation of criminal acts [17, pp. 88-95].

Researcher Belkin R.S. argues that the theoretical foundation of the judicial experiment is based on the application of two general scientific methods of cognition — the experimental method and the modelling method, while its logical basis is represented by analogy [7, pp.184-185].

The experimental method of cognition is widely used in judicial, investigative, and forensic examination practice, as the performance of experimental actions allows for the verification of the objective possibility of carrying out certain actions and for the perception of specific phenomena or facts. In a general sense, the experiment is understood as one of the principal methods of scientific research, in which the study of phenomena is carried out under deliberately selected or artificially created conditions.

In philosophy, the term "experiment" (from the Latin experimentum — research) denotes an empirical method of cognition of real-world phenomena, carried out under specially reproduced conditions reflecting natural laws, based on a specific scientific theory that establishes the purpose, procedure, and interpretation of experimental results. As a means of correlating theoretical models with real physical processes, the experiment provides empirical meaning to the quantities defining the abstract object of scientific theories, thereby conferring cognitive value upon them.

The term "experiment" is also understood as "...a planned observation, systematic isolation or combination of conditions, for the purpose of studying the phenomena de-

pendent upon them" [14, pp. 191-192].

The essence of the experimental method, according to I. M. Luzghin, consists in the investigation of an object under conditions in which the researcher exerts an active influence upon it by creating artificial circumstances necessary for identifying relevant properties or by modifying the process in a predetermined direction. The content of this method is formed by any experimental actions used to verify the propositions of scientific theory or practical activity [10, p. 159].

Authors Bilenciuk P.D., Lisicenko V.K. and Klimenko N.I., consider that the effective application of the experimental method is conditioned by compliance with several general principles, namely: a) in experiments (experimental actions), the real object or its model (material or imaginary) must be used; b) regarding the investigated object, external conditions that existed at the time of the fact or event subject to verification must be recreated or ensured; c) modification of external conditions is permitted depending on the purpose of the research; d) experimental actions must be repeated several times [8, p. 305].

As an important method within the system of cognitive approaches, the experiment is actively applied in almost all scientific fields and in various spheres of human practical activity [14, p. 576].

The experiment may function both as a general scientific method (constituting a cognitive component of other criminal investigation measures, such as judicial expertise and crime scene examination) and as a judicial experiment, whose cognitive possibilities are primarily limited by the corresponding procedural form. It should also be noted that the judicial experiment represents a specific method of cognition within which previously acquired knowledge can be employed as a criterion for establishing truth. At present, the experiment should be grounded in knowledge derived from psychology, visual psychodiagnostics, physics, mathematics, and other related disciplines.

Considering the experiment as a method of cognition from a dialectical-materialist perspective, the statement of Shtoff V.A. is relevant: "...observation and experiment represent essential elements of experimental action, understood in the dialectical-materialist sense, that is, as a process of interaction in which the object not only exists independently of the subject's consciousness but is also subjected to active influence" [12, p. 54].

Proceeding from the system-activity approach in defining the essence of the judicial experiment, it is considered that this measure encompasses both empirical and theoretical (rational) knowledge.

The judicial experiment represents a means of verifying and clarifying the investigative version formulated during criminal investigation or the hypotheses advanced by the suspect (accused) regarding the manner in which the offense was committed. However, as investigative practice demonstrates, the judicial experiment has a dual character. On the one hand, it may confirm or refute a certain version (for example, the investigative version of the criminal investigation body or the statements of the suspect/accused); on the other hand, it provides the possibility of discovering new information. Thus, the judicial experiment aims not only at verifying or clarifying established facts but also at obtaining new evidence in the criminal case.

The experiment, both in investigative practice and in other areas of criminal procedure, represents a research situation concerning a phenomenon under specially created and controlled conditions that allow active management of the course of the process, namely intervention and modification in accordance with the research objectives, as well as the "reconstruction" of the studied phenomenon by reproducing these conditions. The researcher-experimenter's task consists in isolating the investigated phenomenon from insignificant influences and highlighting the aspect of interest in its natural and authentic

form. The same logic applies to the judicial experiment, since through the conduct of this procedural action it is established whether a certain event or action could have occurred under the given circumstances.

Thus, within criminal proceedings, a specific form of application of the experimental method is the judicial experiment. As a cognitive method, it represents the process of investigating the observed phenomenon (the criminal event), its connections with other phenomena and events, under conditions of artificially modified environment. Since the judicial experiment is, first and foremost, a scientific experiment, it must comply with general scientific categories; therefore, its conduct must employ scientific methods such as analysis and synthesis, possess a cognitive character, and be governed by the principles of scientific research, namely continuity, comprehensiveness, veracity, and objectivity.

The experiment represents an empirical method of studying real-world phenomena, carried out under specially reproduced conditions reflecting natural laws, on the basis of a specific scientific theory that determines its purpose, procedure, and interpretation of results. As a means of correlating theoretical models with real physical processes, the experiment provides empirical significance to the magnitudes and entities defining the abstract object of scientific theories, thereby ensuring their cognitive value.

Contemporary science employs: 1) real experiments, among which are distinguished: a) qualitative experiments, aimed at establishing the existence or non-existence of postulated phenomena; and b) quantitative experiments, aimed at determining the numerical values of the investigated characteristics of objects; 2) mental experiments, conducted for the purpose of creating an idealized, conceptual representation of the object [14, pp.191-192].

The analysis of investigative practice and specialized literature shows that, in many cases, the verification and objective evaluation of the evidence obtained is possible only through the conduct of the judicial experiment [6, p.303; 13, p.101; 11, p.89].

The performance of the experiment enables the representative of the criminal investigation body to verify, by experimental methods, the truthfulness of the information obtained during the investigation of the criminal case, the correctness of hypotheses, investigative versions, and conclusions, as well as to reconstruct the complete picture of the event, taking into account its interrelations, various details, and particularities. The success rate of investigative actions largely depends on how properly the criminal investigation officer (prosecutor) plans the experimental procedures, since the evidentiary basis is constituted by the results of the experiment, recorded in the official protocol (both positive and negative). However, in practice, law enforcement representatives do not always fully exploit the potential of the judicial experiment, and during its execution, errors are frequently committed that hinder the use of the obtained results before the court.

In addition, we note that, according to the opinion of Celysheva O.V., it is correct to classify and systematize all types of judicial experiments into two categories: 1) experiments related to the reproduction of a person's actions; 2) experiments aimed at reproducing (reconstructing) certain events.

On the basis of these categories, the particularities of tactical tasks and the decisions adopted by representatives of criminal investigation bodies in organizing and conducting the judicial experiment are established. Furthermore, Celysheva O.V. states that the results of the judicial experiment are recommended to be determined, according to their content, as positive and negative, which allows for the correct assessment of their significance in establishing circumstances relevant to the criminal case. At the same time, a positive result indicates only hypothetically the existence of circumstances that must be proven within criminal proceedings [21, p.183].

The conclusions of the experiment may lead to the correction of the previously ad-

vanced investigative versions and the formulation of new ones, as well as the performance of criminal investigation actions that were not carried out earlier — such as interrogations, ordering of forensic examinations, etc. [5, p.249]. Thus, as rightly argued by Doraș S., the results of the experiment within criminal investigation proceedings generally have a dual significance: first, they serve as a basis for initiating and conducting other procedural activities aimed at administering the necessary evidence for resolving the case; second, they contribute to the substantiation of the decision regarding the offense and its perpetrator, expressed by the criminal investigation body in the indictment act or in another procedural document drawn up at the end of the investigation [1, p.465].

Conclusions and recommendations. The conduct of the judicial experiment represents an independent decision of the criminal investigation officer (prosecutor), deriving from the necessity to reproduce, through experimental methods, the statements previously made by the interviewed person. The experimental character constitutes the main distinctive feature and significance of the judicial experiment. In certain cases, its results may influence the solution in criminal cases by confirming or refuting the statements of the suspect, accused, injured party, or witnesses.

The judicial experiment allows not only the observation of events and actions under predetermined conditions but also intervention in a given process by transforming and modifying the conditions under which it unfolds. In this regard, the judicial experiment represents a procedural action aimed at collecting new evidence and verifying existing evidence by performing experimental actions oriented toward establishing the possibility of the existence or perception of facts, the commission of acts, the occurrence of consequences, the elucidation of the event mechanism, as well as the process of trace formation relevant to the criminal case, usually carried out under reconstructed or recreated conditions as close as possible to the environment in which the investigated event occurred.

In real investigative practice, during the conduct of the judicial experiment, it is not always possible to fully comprehend the studied phenomenon, or to identify, manage, and modify it in the desired direction. However, the purpose of experimental activity is precisely to achieve the highest possible level of control over the process and, on this basis, to establish the veracity of the criminal event. This represents the methodological ideal of the judicial experiment.

The English proverb “A picture is worth a thousand words” is appropriately integrated into the conceptual framework that highlights the value of the judicial experiment — not for reasons of personal interest, but because any criminal case, or more precisely, the key criminal event forming its core, is composed of a multitude of “images” that the criminal investigation officer (prosecutor) attempts to reconstruct and reconstitute based on statements made by persons with varying levels of sincerity or personal interest.

Within this procedural labyrinth of contradictory information, the use of a specific experimental method characteristic of the judicial experiment appears fully justified, as it allows the criminal act to be investigated “from within”, analyzed in its smallest details, and perceived directly based on factual reality.

Bibliographical references

1. Doraș S. Criminalistics. Chişinău: Cartea Juridică Publishing House, 2011. 632 p. ISBN 978-9975-53-015-6.
2. Gheorghiță M. Treatise on Criminalistics. Chisinau, 2017. 871 p. ISBN 978-9975-53-834-3.
3. Jitariuc V., Calendari D. Criminal Procedure Law. General Part. University Textbook. Cahul: Print Caro, 2025. 399 p. ISBN 978-5-85748-116-5.
4. Jitariuc V., Rusu V. Treatise on Criminalistics. Part II. Criminalistics Tactics. Bucharest:

Pro Universitaria Publishing House, 2025. 1069 p. ISBN 978-606-26-2008-0.
5. Osoianu T. et al. Tactics of Criminal Investigation Measures. Chişinău: Cartea Militară Publishing House, 2020. 339 p. ISBN 978-9975-3366-0-4.
6. Belkin R.S. Course of Soviet Criminalistics, Vol. 2. Moscow: Academy of the USSR Ministry of Internal Affairs Publishing Office, 1978. 410 p.
7. Belkin R.S. Essays on Criminalistics Tactics: Study Guide. Volgograd: Higher School of the Ministry of Internal Affairs of Russia, 1993. 200 p.
8. Bilenciuk P.D. et al. Criminalistics: Textbook. Edited by P.D. Bilenciuk. Kyiv: Atika Publishing House, 2001. 544 p.
9. Burdanova S.V. Search for Truth in Criminal Procedure. St. Petersburg: Legal Center Press, 2003. 262 p. ISBN 5-94201-190-7.
10. Luzgin I.M. Methodological Problems of Investigation. Moscow, 1973. 215 p.
11. Selivanov N.A., Terbilov V.I. Initial Investigative Actions: A Brief Investigator's Handbook. Moscow: Gosyurizdat, 1956. 283 p.
12. Shtoff V.A. Introduction to the Metrology of Scientific Cognition: Study Guide. Leningrad: Leningrad University Publishing House, 1972. 191 p.
13. Criminalistics: University Textbook. Edited by N.P. Yablokov. Moscow: BEK Publishing House, 1996. 798 p. ISBN 5-85639-046-6.
14. Philosophical Encyclopedic Dictionary. Kyiv: Abris, 2002. 742 p.
15. Criminal Procedure Code of the Republic of Moldova: Law of the Republic of Moldova No.122-XV of 14 March 2003. Official Gazette of the Republic of Moldova, 2003, Nos. 104–110. In force since 12 June 2003.
16. Jitariuc V. Judicial experiment: concept, tasks and varieties. In: Legal Dialogues. Edited by T. Toader. Iași: Alexandru Ioan Cuza University Publishing House, 2023, pp. 123-134. ISBN 978-606-714-816-9.
17. Ishchenko D.P., Fisakov M.Yu. The impact of procedural errors committed by preliminary investigation bodies on the quality, effectiveness and completeness of investigation. Philosophy of Law, 2023, No.2(105), pp. 88-95. ISSN 1817-7085.
18. Mishutochkin A.L. Tactical conduct of investigative experiment in the investigation of non-obvious crimes. Glagol of Justice, 2000, No.4(26), pp. 10-12. Available: https://cyberleninka.ru/article/n/taktika-provedeniya-sledstvennogo-eksperimenta-pri-rassledovanii-neochevidnyh-prestupleniy/pdf (accessed 24.01.2026).
19. Ramazanov Z.A. Investigative experiment in the system of investigative actions. Journal of Legal and Economic Research, 2023, No.4, pp. 106-109. ISSN 1995-1248. Available: https://giefjournal.ru/sites/default/files/016.%20R.A.%20Ramazanov.pdf (accessed 24.01.2026).
20. Stelmakh V.Yu. The system of investigative actions in the Russian criminal procedure. Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia, 2015, No.11, pp.161-165. ISSN 2073-0454. Available: https://cyberleninka.ru/article/n/sistema-sledstvennyh-deystviy-v-rossiyskom-ugolovnom-protsesse/viewer (accessed 24.01.2026).
21. Chelysheva O.V. Theoretical and practical issues of the investigative experiment. Siberian Law Review, 2022, Vol. 19, No.2, pp.176-184. ISSN 2658-7602. Available: https://www.siberianlawreview.ru/jour/article/view/1714/1526 (accessed 24.01.2026).
22. Didenko N. S. Some features of using Internet resources in the conduct of certain investigative actions. In: Innovative Methods and Educational Technologies in Training Law Enforcement Officers. Proceedings of the All-Russian Scientific and Practical Conference, Rostov-on-Don, 2017, pp.22-30. ISBN 978-5-89288-333-7.

CZU 351.778.51:004 DOI: https://doi.org/10.5281/zenodo.20841956

DIGITALIZATION OF BUILDING PERMITS AS AN INSTRUMENT FOR PREVENTING CONSTRUCTION-RELATED OFFENSES

Mariana VATAMANITA,
PhD Candidate,
"Constantin Stere" University of European Political and Economic Studies,
Republic of Moldova
ORCID: 0009-0004-2949-4750

Abstract

The digitalization of the building permit issuance process is approached as a strategic tool aimed at preventing crimes in the construction sector, in an environment marked by vulnerabilities such as corruption, abuse of office, document falsification, and unauthorized construction activities. It is based on the idea that traditional administrative mechanisms, often characterized by excessive bureaucracy, lack of transparency, and discretionary decision-making, can create conditions conducive to illicit conduct and erode public trust in institutions. The implementation of electronic platforms, digital registries, and interconnected record-keeping systems contributes to increasing transparency, ensuring decision traceability, and facilitating the verification of procedural steps.

The analysis of the regulatory framework highlights the need to align urban planning legislation with digital governance policies and European standards concerning administrative integrity and accountability. The advantages of integrated information systems are emphasized, including limiting direct contact between applicants and officials, reducing opportunities for corruption, and enhancing control mechanisms. In this context, digitalization transcends its technological dimension, positioning itself as an essential instrument for strengthening legality and preventing criminal phenomena in the construction sector.

Keywords: administrative digitalization, building permits, crime prevention, construction sector, digital governance, institutional integrity, decision-making transparency.

DIGITALIZAREA AUTORIZAȚIILOR DE CONSTRUIRE CA INSTRUMENT DE PREVENIRE A INFRACȚIUNILOR ÎN CONSTRUCȚII

Abstract

Digitalizarea procesului de emitere a autorizațiilor de construire este abordată ca un instrument strategic destinat prevenirii infracțiunilor în sectorul construcțiilor, într-un context caracterizat de vulnerabilități precum corupția, abuzul de serviciu, falsificarea documentelor și realizarea construcțiilor neautorizate. Această abordare pornește de la ideea că mecanismele administrative tradiționale, adesea caracterizate prin birocrație excesivă, lipsă de transparență și decizii discreționare, pot crea condiții favorabile pentru conduite ilicite și pot eroda încrederea publicului în instituțiile statului. Implementarea platformelor electronice, a registrelor digitale și a sistemelor interconectate de evidență contribuie la creșterea transparenței, la asigurarea trasabilității deciziilor și la facilitarea verificării etapelor procedurale.

Analiza cadrului normativ evidențiază necesitatea alinierii legislației în domeniul urbanismului cu politicile de guvernanță digitală și cu standardele europene privind integritatea și responsabilitatea administrativă. Sunt evidențiate avantajele sistemelor informaționale integrate, printre care limitarea contactului direct dintre solicitanți și funcționari, reducerea oportunităților de corupție și consolidarea mecanismelor de control. În acest context, digitalizarea depășește dimensiunea sa strict tehnologică, poziționându-se ca un instrument esențial pentru consolidarea legalității și prevenirea fenomenelor infracționale în sectorul construcțiilor.

Cuvinte-cheie: digitalizare administrative, autorizații de construire, prevenirea infracțiunilor, sectorul construcțiilor, guvernanță digital, integritate instituțională, transparență decizională.

Introduction. The construction sector is widely recognized as one of the areas most exposed to risks of corruption and administrative irregularities, due to the high economic value of projects and the complexity of the permitting processes. Traditional procedures, which rely on physical documentation and direct interaction between applicants and officials, can create opportunities for discretionary decision-making and facilitate illicit behavior.

In this context, the digitalization of building permits emerges as a structural solution to mitigate systemic vulnerabilities and strengthen administrative integrity.

Methods and materials applied. The present study adopts a qualitative and comparative research methodology to explore the transformative impact of digitalization on the building permit process in the Republic of Moldova and its role in preventing construction-related offenses. The methodological framework integrates several complementary approaches to ensure a thorough and multidimensional analysis of the phenomenon.

Firstly, a documentary and regulatory analysis forms the foundation of the research. This involves an in-depth examination of legislative acts, regulatory frameworks, policy documents, and guidelines pertaining to urban planning, construction permitting, and e-governance both within Moldova and in selected European Union (EU) countries. Through this analysis, the study identifies how domestic laws align or diverge from European standards regarding administrative integrity, transparency, and accountability, thereby establishing a legal context for assessing the potential of digital tools to prevent irregularities in construction administration.

Secondly, the research incorporates case study analysis to investigate the practical operation and effectiveness of digital platforms for building permits. Particular attention is given to workflow structures, accessibility for end-users, administrative controls, and auditing mechanisms embedded within these systems. The Moldovan Automated Information System for Managing and Issuing Permits (SIA GEAP) serves as a central case, offering insights into the procedural and operational benefits of digitized permit management. Comparative case studies from EU jurisdictions provide benchmarks for best practices and reveal opportunities for optimizing Moldovan systems.

A third methodological component involves comparative evaluation. By contrasting Moldovan digital permitting practices with European standards, the study identifies systemic gaps, potential risks, and avenues for improvement. This approach facilitates the understanding of how interoperability, harmonization of regulatory frameworks, and alignment with EU digital governance principles can enhance the effectiveness of digitalized permitting systems.

Additionally, the research incorporates expert interviews and secondary data analysis. Interviews with specialists in construction law, urban planning, public administration, and digital governance provide qualitative insights into operational efficiency, regulatory compliance, and practical challenges associated with digital platforms. Secondary data sources including administrative reports, statistical analyses, and performance metrics support the evaluation of workflow efficiency, procedural errors, and the incidence of unauthorized construction activities.

By combining these methods and materials, the research establishes a comprehensive analytical framework capable of evaluating how digitalization transforms administrative processes, enhances transparency, strengthens accountability, and reduces the likelihood of fraud, corruption, or other unlawful activities in the construction sector.

The study demonstrates that the integration of digital platforms into building permit management not only optimizes procedural efficiency but also establishes a preventive governance infrastructure, where traceable workflows, real-time auditing, and database interoperability serve as critical tools for enforcing legal compliance and safeguarding institutional integrity.

In summary, the methodology employed provides a systematic, multi-layered, and comparative approach to understanding the preventive potential of digitalization in the construction permitting process. It combines regulatory scrutiny, practical case examination, comparative benchmarks, expert perspectives, and empirical data analysis to evaluate both the technical and governance aspects of digitalized permit management, highlighting its significance as an instrument for crime prevention, enhanced transparency, and effective public administration in Republic of Moldova's construction sector.

Discussion and results obtained. The process of issuing building permits represents a fundamental pillar of regulatory oversight in the construction sector, serving as a critical mechanism to ensure that all construction activities comply with established legal, safety, and environmental requirements. Essentially, a building permit constitutes formal authorization conferred by a recognized authority, empowering stakeholders to undertake construction, renovation, or modification of structures while simultaneously safeguarding the well-being of building occupants and maintaining the integrity of the urban landscape. Despite its central importance, conventional permitting procedures are frequently characterized by their complexity and procedural rigidity, which often leads to inefficiencies and administrative burdens. The strong interdependence on detailed legal frameworks and governmental protocols renders the permitting process susceptible to errors, lack of transparency, and prolonged delays. These structural and procedural limitations can inadvertently open avenues for noncompliance, regulatory breaches, or illicit interventions within the construction process [5, p.102188; 3, p.1-19].

In recent years, a growing body of scholarly research has been dedicated to improving the efficiency, transparency, and reliability of building permit procedures by leveraging advancements in digital technology. Central to these efforts is the digitalization of construction workflows, which aims to integrate modern tools such as Building Information Modeling (BIM), Geographic Information Systems (GIS), and Industry 4.0 principles into the management and oversight of construction projects [4, p.102137-102153; 2, p.100039]. This technological integration enables authorities and project stakeholders to monitor compliance, optimize processes, and ensure adherence to technical, safety, and regulatory standards in a more streamlined and data-driven manner.

Pioneering studies, such as those conducted by researchers Eastman C., Lee J.M., Jeong Y., Lee J.K. [9, pp.1011-1033], laid the groundwork for what has become known as rule-based model checking, a methodological approach designed to evaluate whether construction models comply with established regulatory codes within a digital workflow. By formalizing rules and embedding them into the analysis of digital construction models, this approach allows for systematic validation of design and planning decisions, offering a higher degree of accuracy and consistency compared with traditional manual review methods.

Subsequent research has expanded the application of automated rule-checking across diverse geographic and regulatory contexts, including case studies in Turkey, the USA state of Florida, South Korea, and several European countries. These investigations consistently demonstrate that digital, model-based verification techniques can significantly enhance the precision of the permit review process, reduce human errors, and

accelerate procedural timelines [14, pp.105115; 15, pp.757-771; 14, pp.143-148; 16, pp.209-233; 18, pp.400-413]. By utilizing digital models as the central reference for compliance assessment, authorities are better equipped to identify inconsistencies, enforce standards uniformly, and minimize the risk of oversight, thereby contributing to safer, more transparent, and more accountable construction permitting practices.

The process of automated model checking in the context of construction compliance typically involves a structured sequence of four essential stages: 1) rule interpretation, which entails understanding and formalizing regulatory requirements so they can be applied systematically; 2) model preparation, involving the conversion of construction or design models into a format suitable for automated analysis; 3) rule execution, during which the prepared model is evaluated against the predefined rules to detect any non-compliance or inconsistencies; and 4) result reporting, which generates a comprehensive output summarizing compliance findings and highlighting areas requiring corrective action [9, pp.1011-1033].

While significant progress has been made in automating the latter three stages model preparation, rule execution, and reporting the initial step of interpreting complex regulatory norms remains a persistent challenge. Converting detailed legal and technical requirements into machine-readable formats that can be seamlessly integrated into automated verification tools often proves difficult due to the complexity, ambiguity, and variability of construction legislation [12, p.105092; 7, pp.651-670]. This step is critical because the accuracy and reliability of the entire automated compliance process fundamentally depend on the correct interpretation of the rules.

Furthermore, research emphasizes that the successful adoption and implementation of BIM-based digital building permits (DBPs) relies not solely on the availability of advanced technological tools but also on the organizational maturity of the public authorities and regulatory institutions responsible for overseeing construction permits. The effectiveness of DBP systems is closely linked to the extent to which these bodies are prepared to adapt their internal administrative workflows, embrace digital practices, and foster a culture of data-driven decision-making within their offices [19, p.45-64]. In other words, even the most sophisticated technical solutions can only achieve their intended outcomes if the organizations utilizing them possess the structural capacity, trained personnel, and procedural readiness to integrate these digital tools into routine permitting operations.

In the context of the Republic of Moldova, the digital transformation of the building permit process has been operationalized through the implementation of the Automated Information System for Managing and Issuing Permits (SIA GEAP). This initiative constitutes a major advancement in the modernization of public service delivery within the construction sector, aiming to enhance procedural transparency, improve administrative efficiency, and provide more accessible services to both citizens and construction professionals. The SIA GEAP platform enables users to request and obtain four critical construction-related permits entirely online: the informational urban planning certificate, the urban planning certificate for design purposes, the building permit itself, and the demolition permit [10].

Through this digital platform, applicants can submit their requests electronically, upload the necessary supporting documents in digital formats, and apply secure electronic signatures via tools such as MPass and EVOSign. In addition, the system allows users to monitor the progress and status of their applications in real time and make the required payments through the online portal, thereby significantly streamlining the workflow.

The adoption of SIA GEAP has substantially reduced the need for in-person interactions between construction applicants and administrative officials. By minimizing face-to-face contacts, the system helps curtail opportunities for discretionary or informal influence that could potentially facilitate irregularities or unethical practices. This reduction in direct interaction, combined with the standardization and digitalization of procedures, strengthens administrative integrity, promotes fairness in decision-making, and acts as a preventive mechanism against potential corruption and procedural abuses within the permit issuance process.

The deployment of digital platforms for managing building permits introduces substantial preventive and regulatory benefits within the construction sector. By implementing standardized procedures across all stages of the permitting process, these platforms create a consistent and uniform framework that ensures each application is treated according to clearly defined rules and requirements. In addition, the automation of verification tasks allows for the systematic review of submitted documentation, reducing the reliance on manual checks and thereby minimizing human error or subjective interpretation that could otherwise compromise compliance.

A critical feature of these digital systems is the establishment of persistent electronic audit trails. Each action performed within the permit management platform from document submission to administrative review is systematically recorded and can be verified at any time. This comprehensive traceability significantly enhances institutional accountability, serving as both a deterrent to attempts at document falsification and a mechanism to prevent unauthorized or illegal construction activities.

Moreover, the integration of disparate databases including land cadastre records, urban planning registries, and construction permits enables real-time cross-referencing of information. This interconnectivity ensures that discrepancies or irregularities in submitted documents can be identified promptly, substantially reducing the likelihood of fraudulent practices. At the same time, it accelerates the verification process, allowing authorities to validate compliance more efficiently and consistently, which ultimately contributes to a safer, more transparent, and more reliable construction regulatory environment.

From the standpoint of public governance, the implementation of the SIA GEAP system is closely aligned with the broader e-governance strategy adopted by the Republic of Moldova, which seeks to harness the potential of information and communication technologies (ICTs) to enhance the efficiency, transparency, and credibility of administrative operations. By centralizing and digitalizing key processes, the initiative not only streamlines service delivery and reduces bureaucratic inefficiencies but also allows public authorities to exercise systematic oversight and monitoring of compliance across all municipal jurisdictions.

The digitalization of permit issuance through SIA GEAP ensures that processes are standardized and accessible, facilitating more equitable and consistent service delivery for both citizens and construction professionals. This centralized approach enables authorities to track each stage of permit processing, ensuring adherence to legal and procedural standards while reducing opportunities for discretionary decision-making or informal influence that could compromise fairness.

Looking forward, the Moldovan government has set a target for full digital adoption across all local administrations by 2027, expanding the system's reach beyond the 33 municipalities currently connected to SIA GEAP. This expansion aims to establish uniformity in service provision nationwide, ensuring that all municipalities operate under the same

digital standards and procedures. Furthermore, these reforms are designed to align with European benchmarks for interoperability, administrative integrity, and the delivery of digital public services, reinforcing Moldova's commitment to international best practices in digital [17, p.108854; 11, p.21].

Through these measures, the SIA GEAP initiative not only modernizes public administration but also strengthens transparency, accountability, and trust in governmental processes, setting a robust foundation for the prevention of irregularities and misconduct in the construction sector.

In a broader perspective, the digital transformation of the building permit system in the Republic of Moldova serves as a clear illustration of how the strategic integration of advanced information and communication technologies (ICTs), coupled with automated compliance verification mechanisms and a centralized digital infrastructure, can function as an effective preventive instrument against illicit activities in the construction sector. By embedding technology-driven solutions into the entire permitting workflow, the system enhances operational efficiency, reduces procedural delays, and ensures that all steps are carried out in a transparent and accountable manner.

This modernization initiative goes beyond mere procedural optimization. By facilitating real-time monitoring, creating persistent digital records, and standardizing permit issuance practices, the digital system substantially mitigates the risk of irregularities, including unauthorized construction, fraudulent documentation, and informal interventions. In addition, the implementation of automated rule-checking and verification reduces human error and discretionary decision-making, thereby limiting avenues for corruption or unethical practices among officials and stakeholders.

Ultimately, the Moldovan experience demonstrates that digitalization in the construction permitting process is not merely a technical upgrade, but a comprehensive governance reform. It strengthens institutional accountability, promotes transparency, and fosters a culture of compliance within the sector. By systematically controlling and recording every phase of permit issuance, digital solutions create a robust safeguard against illegal actions, ensuring that construction activities adhere to legal, safety, and environmental standards while reinforcing public trust in government institutions.

In the modern administrative environment of the Republic of Moldova, the implementation of contemporary digital platforms dedicated to the management and issuance of building permits has become a fundamental tool for promoting greater transparency, accountability, and openness within public sector operations. These sophisticated systems facilitate the public disclosure of extensive information concerning construction permit applications, including all submitted documentation, the current stage of review by the relevant authorities, and the legally defined timelines for decision-making. By offering stakeholders and the general public real-time access to such procedural data, these platforms make it possible to track and verify each step of the permitting process, thereby reinforcing institutional oversight, enhancing the predictability of administrative actions, and cultivating public confidence in governance processes.

The continuous online availability of this information serves several interrelated functions. First, it addresses the traditional lack of visibility in bureaucratic decision-making by providing transparent, accessible, and timely updates, which strengthens trust in the administrative system among citizens, construction professionals, and other stakeholders. Applicants and other interested parties can independently monitor the progress of their submissions, assess compliance with procedural timelines, and receive updates without having to rely on informal inquiries, personal contacts, or subjective assessments

provided by officials. Second, the structured and transparent provision of information reduces uncertainty and constrains the scope for discretionary or arbitrary interventions by administrative personnel, which might otherwise compromise procedural fairness, legal compliance, and the overall integrity of the construction permitting system. By creating a verifiable and systematic flow of information throughout the process, these digital platforms operate as a robust preventive mechanism against potential administrative irregularities, misuse of authority, and corrupt practices that could undermine the legal and operational framework of the sector [1].

Beyond transparency, the integration of electronic systems within the Moldovan construction permitting framework enables the automatic recording of every transaction, interaction, and procedural action associated with a permit application. This persistent logging establishes a robust traceability mechanism, allowing auditors, regulatory authorities, and oversight bodies to reconstruct the sequence of events for any application accurately. Detailed traceability identifies individual responsibilities, reinforces accountability, and provides an institutional safeguard against errors, mismanagement, or arbitrary interventions. In doing so, it strengthens both internal and external control mechanisms and enhances the integrity of public administration in the construction sector.

Moreover, digitalization has facilitated the interconnection of multiple national databases, including land cadastre registries, urban planning records, and construction registries. Such integration allows for real-time cross-checking of information, reducing the risk of accepting fraudulent or incomplete documentation and accelerating compliance verification. Automated verification and synchronized oversight across municipalities further improve the efficiency and reliability of legal and regulatory enforcement. By combining traceable workflows, automated auditing, and database integration, Republic of Moldova's digital permitting systems provide a preventative infrastructure that reduces opportunities for administrative errors, irregularities, and corruption.

An additional advantage of digital platforms is the elimination of dependence on physical document handling, which historically created vulnerabilities to document loss, duplication, or manipulation. Electronic submission, storage, and processing reduce bureaucratic inefficiencies while enabling authorities to monitor and enforce compliance with urban planning regulations more effectively. This digital transformation not only enhances administrative efficiency but also strengthens regulatory oversight, promoting lawful, transparent, and sustainable urban development.

These efforts align with the broader national strategy for digital transformation, aimed at harmonizing Republic of Moldova's public services with European standards of governance, transparency, and accountability. European Union (EU) policies emphasize the modernization of administrative systems, highlighting the role of digitalization in preventing fraud, corruption, and procedural irregularities in public administration. By integrating digital technologies into core governmental processes, Republic of Moldova is enhancing institutional performance, reducing bureaucratic inefficiencies, and ensuring that decisions follow predictable, legally consistent procedures.

The migration of public services to online platforms including cadastral and urban planning services contributes to a more interconnected digital governance ecosystem. Unified platforms, such as national public service portals and mobile applications, provide a single point of access for multiple administrative services. These systems enable authorities to monitor procedures effectively, perform comprehensive compliance checks, and detect irregularities early. Consequently, the digitalization of administrative processes

supports preventive governance, increases transparency, and strengthens accountability in urban planning and construction activities, fostering sustainable and legally compliant development [6].

At the EU level, similar digitalization initiatives have demonstrated that electronic systems improve administrative integrity, operational efficiency, and fraud prevention in construction permitting. Examples include the DigiChecks project, which creates digital frameworks for permit management and regulatory compliance verification, and the CHEK (Change Toolkit for Digital Building Permits) project, which transforms traditional paper-based permitting into standardized, interoperable digital workflows. Both initiatives employ technologies such as Building Information Modeling (BIM), Geographic Information Systems (GIS), and automated compliance checks, enabling authorities to verify adherence to urban planning and construction standards accurately [8].

Digital platforms further reduce opportunities for corruption by minimizing direct interactions between applicants and public officials. Every procedural step is automatically registered, creating an auditable trail for review, monitoring, and enforcement. Electronic registers, traceable workflows, and interoperable databases allow competent authorities and, where legally permitted, civil society organizations to detect irregularities, verify compliance, and ensure accountability. These preventive mechanisms contribute directly to reducing the incidence of illegal or non-compliant construction activities, which may otherwise compromise public safety, environmental protection, and the rule of law.

Conclusions. The digitalization of building permit procedures in the Republic of Moldova represents a comprehensive preventive mechanism designed to curb administrative fraud, corruption, and other criminal activities associated with the construction sector. By integrating advanced technological solutions, procedural transparency, traceable workflows, and alignment with European digital governance standards, Republic of Moldova has developed a system that not only enhances operational efficiency but also strengthens institutional oversight and supports sustainable urban development. While digitalization by itself cannot entirely eliminate risks of misconduct or irregularities, it functions as a fundamental instrument of preventive governance, ensuring that domestic practices are aligned with broader European frameworks emphasizing integrity, accountability, and law-abiding construction management.

Digital platforms for managing construction permits constitute a powerful tool for crime prevention both within Moldova and across European jurisdictions by achieving several key objectives:

a) Increasing transparency – making information on permit applications, procedures, and deadlines accessible to the public;

b) Reducing administrative opacity – ensuring that decision-making processes are visible, standardized, and less prone to informal or discretionary influence;

c) Facilitating oversight and auditing – enabling internal and external control bodies to monitor procedural steps, identify irregularities, and assign responsibilities;

d) Minimizing opportunities for corruption, fraud, or abuse – by automating verification, tracing administrative actions, and integrating multiple databases for cross-checking.

By creating a transparent, traceable, and controllable administrative environment, the digitalization of building permits serves as an effective preventive measure against illicit activities in the construction sector. The Moldovan experience demonstrates significant progress in implementing these mechanisms, yet the enhancement of interoperabil-

ity between databases and harmonization of legal frameworks remains a crucial priority for ensuring long-term effectiveness.

Looking forward, the success of digital reforms in construction governance will depend on the integration of technology with robust legal oversight, institutional accountability, and a culture of public integrity. Digital tools do not replace legal regulations; rather, they reinforce them by providing modern instruments for monitoring, auditing, and preventing illegal conduct. In this way, digitalization supports a proactive approach to compliance, ensuring that construction activities are carried out in accordance with law, technical standards, and ethical administrative practices, both within Moldova and in line with European best practices.

Bibliographical references

1. Agenția de Guvernare Electronică, Four Construction Permits Can Now Be Requested and Obtained Fully Online!, 2023. Available: https://www.cio.gov.md/en/node/40791 (accessed 09.03.2026).
2. Amor R., Dimyadi J. The promise of automated compliance checking. In: Developments in the Built Environment, 2021, Vol. 5, pp.100039.
3. Ataide M., Braholli O., Siegele D. Digital Transformation of Building Permits: Current Status, Maturity, and Future Prospects. In: Buildings, 2023, No.13(10), pp.1-19.
4. Bloch T., Borrmann A., Pauwels P. Graphbased learning for automated code checking-Exploring the application of graph neural networks for design review. In: Advanced Engineering Informatics, 2023, Vol. 58, p.102137-102153.
5. Bloch T., Fauth J. The unbalanced research on digitalization and automation of the building permitting process. In: Advanced Engineering Informatics, 2023, No.58, p.102188.
6. Europarl. Briffing Commitments made at the confirmation hearings of the Commissioners-designate 2024-2029. Available: https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/700896/IPOL_BRI%282025%29700896_EN.pdf?utm_source (accessed 09.03.2026).
7. Ciotta V., Ciccone A., Asprone D., Manfredi G., Cosenza E. Structural E-permits: An openbim, model-based procedure for permit applications pertaining to structural engineering. In: Journal of Civil Engineering and Management, Vol. 27(8), pp.651-670.
8. Commissione Europea. Digital environment for management of permits and compliance in building and construction, 2022. Available: https://cordis.europa.eu/project/id/101058541/it?utm_source (accessed 09.03.2026).
9. Eastman C., Lee J.-M., Jeong, Y., Lee J.K. Automatic rule-based checking of building designs.Automation in Construction, 2009, No.18(8), pp.1011-1033.
10. E-governance Agency. Four construction permits can now be requested and obtained full online. Chișinău, 2025. Available: https://www.cio.gov.md/en/node/40791?utm_source (accessed 09.03.2026).
11. Fauth J., Bloch T., Noardo F., Nisbet N., Kaiser S.B., Gade P.N., Tekavec J. Taxonomy for building permit system - organizing knowledge for building permit digitalization. In: Advanced Engineering Informatics, 2024, No.59, p.21.
12. Fischer S., Schranz C., Urban H., Pfeiffer D. Automation of escape route analysis for BIM-based building code checking. In: Automation in Construction, 2023, Vol. 156, p.105092.
13. Guler D., Yomralioglu T. A reformative framework for processes from building permit issuing to property ownership in Turkey. In: Land Use Policy, 2021, 101(C), pp.105115.

14. Kim H., Lee J.-K., Shin J., Choi J., Visual language approach to representing KBim-Code-based Korea building code sentences for automated rule checking. In: Journal of Computational Design and Engineering, No.6(2), pp.43–148.
15. Messaoudi M., Nawari N. Virtual permitting framework for off-site construction case study: A case study of the state of Florida. In: Lecture Notes in Civil Engineering, 2020, No.98, pp.757-771.
16. Noardo F., Ellul C., Harrie L., Overland I., Shariat M., Ohori K.A., Stoter J. Opportunities and challenges for GeoBIM in Europe: developing a building permits use-case to raise awareness and examine technical interoperability challenges. In: Journal of Spatial Science, 2020, No.65(2), pp.209-233.
17. Noardo F., Guler D., Fauth J., Malacarne G., Ventura S.M., Azenda M., Olsson P.-O., Senger L. Unveiling the actual progress of digital building permit: Getting awareness through a critical state of the art review. In: Building and Environment, 2022, No.213, p.108854.
18. Ullah K., Raitviir C., Lill I., Witt E. BIM adoption in the AEC/FM industry – the case for issuing building permits. In: International Journal of Strategic Property Management, 2020, No.24(6), pp.400-413.
19. Ullah K., Witt E., Lill I. The BIM-based building permit process: Factors affecting adoption. Buildings, 2022, Vol. 12(1), p.45-64.

CZU 343.132(624):341.231.14 DOI: https://doi.org/10.5281/zenodo.20842173

UTILIZATION OF THE OUTCOMES OF SPECIAL INVESTIGATIVE ACTIVITIES IN SOUTH SUDAN: AN ANALYSIS BETWEEN OPERATIONAL REALITY AND EUROPEAN HUMAN RIGHTS STANDARDS[1]

Boris GLAVAN,
PhD Habilitated, Associate Professor,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-3838-4308

Radu Constantin MARINESCU,
PhD Candidate,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Police Expert, United Nations Organization,
United Nations Mission in South Sudan (UNMISS),
Republic of South Sudan
ORCID: 0009-0000-6350-5071

Abstract

South Sudan is the last country globally to declare its independence, on July 9, 2011. Constantly situated within the context of interstate civil wars and interethnic and intertribal conflicts, its legislative progress advances slowly, characteristic of a state at the beginning of its journey, with normative gaps and, often, with violations of fundamental human rights.

Like any state seeking to protect national security against terrorism, organized crime, espionage, and other such threats, South Sudan established, in 2014, the National Security Service (NSS), granting it extensive powers to conduct special investigative activities for the prevention and combating of offenses against the state. Although the NSS Act authorizes the conduct of such special activities, including undercover investigations, the execution of searches, the monitoring of correspondence, and the gathering of information for the protection of the state, the utilization of their outcomes remains constrained by limited coordination with the National Police Service and other judicial authorities. These institutions, in addition to having insufficient professional training, lack bilateral protocols or other instruments of interinstitutional cooperation, which frequently leads to violations of fundamental human rights and of the right to a fair trial.

This research aims to reflect on the convergence between the operational reality regarding the special investigative activities in South Sudan and European jurisprudence on human rights guarantees.

Keywords: special investigative activities, National Security Service, interinstitutional cooperation, human rights, fair trial, national security.

VALORIFICAREA REZULTATELOR ACTIVITĂȚII SPECIALE DE INVESTIGAȚII ÎN SUDANUL DE SUD: O ANALIZĂ ÎNTRE REALITATEA OPERAȚIONALĂ ȘI STANDARDELE EUROPENE ALE DREPTURILOR OMULUI

Abstract

Sudanul de Sud este ultima țară la nivel global care și-a declarat independența, la 9 iulie 2011. Aflat în mod constant în contextul războaielor civile interstatale și al conflictelor interetnice și intertribale, parcursul

[1] The author's practical experience gained during international missions in Africa, including in South Sudan, guided the choice of the topic, without relying on any information that is not already publicly available.

său legislativ avansează lent, caracteristic unui stat aflat la început de drum, cu lacune normative și, de multe ori, cu încălcări ale drepturilor fundamentale ale omului.

Ca orice stat care urmărește protejarea securității naționale împotriva terorismului, a criminalității organizate,spionaj, etc., Sudanul de Sud a înființat, în anul 2014, Serviciul de Securitate Națională (SSN), conferindu-i competențe extinse în desfășurarea activităților speciale de investigații pentru prevenirea și combaterea infracțiunilor împotriva statului. Deși Legea SSN autorizează derularea unor astfel de activități speciale, inclusiv investigații sub acoperire, efectuarea de percheziții, monitorizarea corespondenței și obținerea de informații în vederea protecției statului, valorificarea rezultatelor acestora rămâne constrânsă de coordonarea limitată cu Serviciul Național de Poliție și cu celelalte autorități judiciare. Aceste instituții, pe lângă faptul că dispun de o pregătire profesională insuficientă, nu beneficiază de protocoale bilaterale sau alte instrumente de cooperare interinstituțională, ceea ce conduce frecvent la încălcări ale drepturilor fundamentale ale omului și ale dreptului la un proces echitabil.

Prezenta cercetare își propune să reflecte asupra convergenței dintre realitatea operațională privind activitățile speciale de investigații în Sudanul de Sud și jurisprudența europeană în materie de garanții ale drepturilor omului.

Cuvinte-cheie: activități speciale de investigații, Serviciul de Securitate Națională, cooperare interinstituțională, drepturile omului, proces echitabil, securitate națională.

Introduction. In 2011, after decades of prolonged intrastate conflicts, South Sudan declared its independence on July 9, becoming the newest state on the world map. Born under democratic auspices, this young state aimed to build its own legal system, largely taking over the legislative heritage of the state from which it separated, while also integrating fundamental principles of international law intended to consolidate its democratic profile.

The reality on the ground, however, paints a profoundly different picture. South Sudan faces major challenges regarding internal security and the functioning of the rule of law. The relationship between the central government and the opposition has remained tense, frequently degenerating into violence, killings, kidnappings, and accusations of conspiracy, all of which seriously affect the fundamental values of human rights, as enshrined in international instruments in the field.

On July 14, 2011, shortly after the proclamation of independence, South Sudan became a member of the United Nations, thereby committing to promote national security, equality and international peace, as well as sustainable development. In the same logic, the state included in its Constitution [20] the provisions of the Universal Declaration of Human Rights of 1948 [1], which it formally assumed. In practice, however, this recognition remains largely declaratory, the effective exercise of fundamental rights being strongly affected by political instability and recurrent violence.

Although the state should provide solid guarantees for the respect of fundamental human rights and freedoms, principles that are provided for in the Code of Criminal Procedure, in Article 6 [24], reality shows a constant violation of these rights. There are, sporadically, isolated cases in which convictions have been pronounced for such abuses, but the vast majority of incidents are not investigated, remaining either unresolved or closed without identifying the perpetrators [3, p.2].

Like other states in post-conflict or even intra-conflict situations, South Sudan has established a National Security Service, whose main task is to maintain state security, including through the use of special investigative techniques. Although these activities represent a fundamental tool for preventing and combating threats to national security, the manner in which they are carried out in practice raises numerous questions. Thus, investigations are often conducted within an insufficiently structured legal framework, without a clear purpose to allow the transfer of files to the courts, and not least, with se-

rious human rights violations.

This research aims to analyze how South Sudanese legislation regulates these investigative activities and to assess its degree of compatibility with European standards regarding the respect for human rights guarantees.

Methods and materials applied. In South Sudan, because working procedures are not public or are classified as secret information, there is no clear definition of special investigative measures. These are synthesized, in a simplified manner, in a single word "investigation", as provided for in the Penal Code or in the South Sudanese Police Law. Consequently, the authors of this study have faced considerable difficulties in collecting the data necessary for analyzing the legal framework applicable to these special investigative measures.

The main primary sources that formed the basis of this research are the Criminal Procedure Code, the Criminal Code, the Police Law, the National Security Law, and the Anti-Corruption Law, all in force in South Sudan, corroborated with comparative materials from European legislation in the field of human rights. Secondary sources include studies carried out by authors, expert reports on human rights abuses in South Sudan, press articles, individual research, as well as discussions with relevant persons in the field. The research is therefore largely based on publicly available sources, having no access to internal working procedures or other documents classified as inaccessible to the public.

Discussions and results obtained. I. South Sudanese Legislation on Special Investigative Activities. The concept of special investigative activity is not a legislative novelty that appeared overnight, but rather the result of a long evolutionary process, determined by the emergence of increasingly complex forms of crime with a serious impact on the rule of law. What differentiates special investigative measures from simple criminal research activities is not only their secret nature or technical complexity, but especially the combination of the heightened degree of intrusion into private life and the exceptional procedural capacity they confer upon authorities [4, pp. 74-76]. Precisely for this reason, their use requires rigorous legal guarantees and effective oversight within the framework of a rule of law state [5, vol. 51, issue 2, pp. 394-412].

If we were to attempt a legal definition, we could say that special investigative activity represents "a procedure of a secret and/or public nature, carried out by competent authorities, with or without the use of special technical equipment, for the purpose of gathering information necessary for the prevention and combating of crime, ensuring state security, public order, defending the rights and legitimate interests of individuals, and the discovery and investigation of crimes" [6, Art. 1].

Paradoxically, although South Sudan has a National Police Law (NPL), a National Security Service Law (NSSL), and a Code of Criminal Procedure (CCPSS), we have not succeeded in identifying a clear definition of this concept in its legislation. What we find instead is the general definition of "investigation" [24, Art. 5], understood as the act or process of discovering relevant facts concerning an offense, including all procedures carried out by the police under the authority of the Prosecutor, Judge, or court of law, for the purpose of gathering evidence.

For example, the investigation of corruption offenses in South Sudan follows ordinary procedures, and the possibility of resorting to special investigative measures is strongly limited by existing legal constraints [7, p. 147], which considerably reduces the capacity of institutions to effectively prevent and combat the phenomenon of corruption.

Although the Code of Criminal Procedure of South Sudan constitutes the foundation of inquiries and investigations in the judicial system, investigations may be carried

out by the police either with the consent of the Public Prosecutor or, in his absence, with the approval of the Magistrate. Moreover, the magistrate may take over the inquiry whenever the situation requires it [24, Art. 52]. This flexibility seems, at first glance, beneficial, given the superior legal training of prosecutors and magistrates. However, it raises serious issues regarding the separation of duties between the police and the prosecutor's office concerning the inquiry and criminal prosecution, a fundamental principle of any fair judicial system.

The South Sudanese National Police Law provides, in Article 7, that police officers may carry out investigations or any other criminal procedures in accordance with the CCPSS and may conduct criminal investigations under the authority of the prosecutor, including searches, interrogations, and even operative surveillance activities [22, Art. 8].

On the other hand, the National Security Service enjoys much broader powers [23]. According to Article 13, Chapter 3, it may: "*monitor, investigate, and conduct searches of suspects and places related to crimes or offenses against the state; gather internal and external information regarding national security; undertake investigations to discover any situation, fact, or activity that could jeopardize national security; monitor frequencies, wireless systems, publications, broadcasting stations, and postal services; as well as arrest or detain any person suspected of committing an offense against national security*" [23, Art. 7]. These activities are carried out, for the most part, with the approval of the Director of the service, but may also be ordered at the request of the Minister or even the President, who chairs the National Security Council.

Regarding the arrest or detention of persons, the National Security Service Law provides that any person who attempts to commit, is caught in flagrante delicto, or is suspected of having committed an offense against the state [23, Art. 7] may be arrested by NSS officers without a warrant. This regulation is in total contradiction with Articles 73 and 75 of the CCPSS, which require the issuance of an arrest warrant by the Public Prosecutor or by a magistrate. At the same time, however, Article 76 of the same code allows police officers within the National Police to arrest persons without a warrant in certain situations. This legislative paradox is completely contrary to international standards in the field, which consider that arresting a person without a warrant represents a serious violation of the fundamental right to liberty and security [8; 2, Art. 5], a violation that also entails the non-observance of other related rights: the right to be informed, the right to be brought before a judge, the right to challenge the measure, and the right to a defense lawyer [2, Art. 5 §§ 2, 3, 4; 24, Art. 93 para. 2], as well as the right to inform the family [24, Art. 93 para. 4]. The case law of the European Court of Human Rights has consistently established that the existence of a valid warrant is not sufficient to justify an arrest; all other guarantees provided for in Article 5 must be respected, and their absence constitutes a serious violation of fundamental rights [8; 9].

Regarding the South Sudanese Anti-Corruption Law, although it should provide for the methods and investigative activities related to the Code of Criminal Procedure, there is no explicit mention regarding the use of special investigative measures. In the absence of such provisions, the president of the investigation committee who has reasonable suspicion that a corruption offense has been or is about to be committed may initiate the investigation and decide the concrete manner of its conduct [25, Arts. 24-25]. Regarding intrusive measures against private life and property, these are regulated in the Code of Criminal Procedure, and the lack of similar norms in the Anti-Corruption Law imposes the supplementary application of the Code of Criminal Procedure in carrying out specific activities.

II. Operational Reality. Although South Sudan has a formal legislative framework, the reality faced by the South Sudanese National Police is extremely difficult. Starting in 2011, the United Nations has carried out its mission in this country with the aim of consolidating peace, stability, and development, protecting civilians (considering that the state has no fewer than 64 ethnic tribes), monitoring human rights, and providing humanitarian assistance.

Regarding institutional capacity development, within the UN mission in South Sudan, UNPOL, the police division of the United Nations, operates. Here, experts from the police forces of several states works, participating in this mission based on inter-institutional collaborations between their home country and the UN, based on their professional expertise. Within UNPOL, there is a department dedicated specifically to professional training, and police experts conduct courses with the National Police on a variety of topics, some of the most important of which concern the field of special investigations.

Although the UN mission has been present in South Sudan for approximately 15 years and has provided the National Police with multiple training programs at various levels, the reality is that the latter still does not possess the necessary capacities to carry out its activities in a professional manner. To illustrate this situation, most police posts or stations do not even benefit from basic items such as chairs, desks, or vehicles. Some police stations literally operate under the shade of a tree, in sparsely populated areas or in some isolated villages. Under these conditions, it is certainly understandable that the National Police cannot undertake special investigations to prevent or combat crime.

Unlike the National Police, the National Security Service uses a wide range of operational methods and information-gathering tools to prevent and combat crimes against national security. Although there are no public documents describing in detail these special investigative techniques, the agency in practice resorts to phone tapping, digital surveillance, the use of a network of informants, physical searches, and the conduct of special operations. All these activities specifically target political figures with opinions contrary to the current regime, human rights activists, journalists, and various individuals within civil society [10].

The valorization of these special activities carried out by National Security Service personnel does not, however, have a purely preventive or probative purpose. On the contrary, their real objective is to diminish or eliminate criticism of the government, to prevent the publication of reports on human rights violations in this state, to discourage journalists from making independent publications, and to block any exchange of opinions among opposition members or civil society [11].

Under the legitimate pretext of conducting special investigative activities for national security, the National Security Service monitors and arrests individuals for long periods, without well-founded charges [12, p. 17], with the aim of maintaining constant monitoring to preemptively neutralize potential threats to the government [13]. In reality, through these means, the aim is to identify individuals who have contrary opinions or who wish to change the country's future for the better.

The National Security Service, although it has responsibilities in the field of conducting special activities, the valorization of these does not follow the required course, generating and maintaining a climate of fear through the practices carried out in recent years. The precise purpose of this strategy is to prevent the exposure of a reality marked by public insecurity, corruption, human rights abuses, the censorship of certain publications, and to discourage individuals who might reveal the weaknesses of the judicial or governmental system [12].

III. Comparative Analysis: South Sudanese Legal Framework and European Human Rights Standards on Special Investigative Measures. Although South Sudan does not currently have a clearly defined concept of special investigative measures, nor a coherent legislative framework specifically regulating such activities, this absence does not, of course, mean that the state cannot conduct investigations. Being the newest state to gain independence, in 2011, the regulation of investigations is found primarily in the Code of Criminal Procedure, which constitutes, metaphorically speaking, the "genealogical tree" for carrying out these activities, in close connection with the National Police Law and the National Security Service Law.

However, if we refer to international human rights law, and here we refer in particular to the European Convention on Human Rights, the International Covenant on Civil and Political Rights, as well as the case law of the European Court of Human Rights, we find that the current legislative framework in South Sudan presents numerous normative gaps in this field. While European law has evolved considerably, establishing clear rules regarding judicial control and the protection of individual rights, the South Sudanese system remains anchored in simplistic norms, inherited from the state from which it separated. Thus, although the Code of Criminal Procedure stipulates that police investigations may be carried out under the authority of the prosecutor or a magistrate, regarding the activities carried out by the other institution, namely the National Security Service, we observe that, although these activities are much more extensive and complex, any form of judicial control is completely lacking.

Referring to the investigative activities carried out by the NSS, a profound weakening of the functional relationship between investigation and criminal prosecution is evident, which represents one of the cornerstones of any rule of law state and a fair judicial system. The case law of the European Court of Human Rights clearly shows us that an institution that simultaneously authorizes, conducts, and monitors special investigative measures risks becoming arbitrary, which inevitably leads to a violation of Article 8 of the Convention. An eloquent example in this regard is the case of *Zakharov v. Russia*, in which the Court emphasized that secret surveillance can diminish or even destroy the fundamental values of democracy, precisely under the pretext of defending it, when there are no fundamental guarantees against abuse [14].

At the same time, from the perspective of the European Court of Human Rights and European law, the regulation of special investigative measures can be considered legitimate only if it cumulatively fulfills the four fundamental principles established by Article 8 of the European Convention on Human Rights, namely: legality, necessity, proportionality, and independent judicial control. These principles are mandatory, the European Court consistently establishing that any interference with private life must be provided for by law, pursue a legitimate aim, and be necessary in a democratic society. At the same time, case law has clarified the nature of the offenses that may justify interference with a person's life, the conditions under which interception of communications may be ordered, the duration of these measures, and the applicable oversight mechanisms [15; 16].

Referring to South Sudanese legislation, we find that these principles are not met. A relevant example is the fact that any person suspected of committing an offense against the state may be arrested without a prior warrant, with the theoretical obligation to bring them before a magistrate within 24 hours [23, Art. 54]. However, the practice documented by international human rights organizations demonstrates that this provision is systematically ignored or, in most cases, simply not respected.

Another major deficiency is the absence of a proportionality test. South Sudanese

legislation does not provide any condition regarding proportionality in the application of special investigative measures, contrary to what the Strasbourg Court's case law clearly establishes. The latter emphasizes that any interference with fundamental rights must be proportional to the legitimate aim pursued and must not be extended beyond what is strictly necessary [17, pp. 129-152; 18].

Last but not least, the absence of independent judicial control constitutes a serious violation of European standards. EU Directive 2016/680 on the protection of personal data in the field of judicial cooperation in criminal matters expressly establishes that any surveillance measure must be subject to control carried out by an independent judicial authority [19]. In South Sudan, however, the authorization and cancellation of special investigative measures are carried out by the National Security Service, which is under the direct authority of the President and, implicitly, under the coordination of the director of this institution. There is no direct contact with the judicial authority nor any other form of effective oversight, as imposed by European norms and directives.

Conclusions. Special investigative measures, although not included as a concept in South Sudan's Code of Criminal Procedure or related legislation on investigative activities, remain a delicate subject. The paradox lies in the fact that these measures exist from an applicative perspective, but from a theoretical perspective, they appear only vaguely, not in their complex form. Researchers, specialized publications, and activists in the field of fundamental human rights protection emphasize that, although the purpose of these activities should have been the prevention and combating of serious crimes or the protection of national security, as well as the fundamental rights of the state and citizens, in reality, they follow a different course, totally contrary to the fundamental principles for which they were created.

The abusive use of special investigative measures can violate fundamental human rights, causing public insecurity and public distrust in state security. Specialists in the field emphasize that this concept must be integrated into national legislation in a clear and objective manner. Clarifications are needed regarding the method of use, the circumstances in which they may be applied, as well as the manner of their valorization within an effective judicial framework.

Although Article 6(c) of the National Security Service Law provides, as one of its principles, respect for human rights and fundamental freedoms, and Article 53(g) establishes as an important attribute respect for the dignity of persons and the protection of fundamental human rights, these provisions are violated in reality. Abuses are not investigated or, as we have stated throughout this research, investigations regarding the violation of duties or competences by NSS staff are usually closed, with only extremely rare cases in which the personnel guilty of producing these abuses have been convicted [12, p. 4, p. 27].

Furthermore, if we refer to the valorization of these special investigative measures, which should result in the outcomes of these activities becoming means of evidence used in criminal prosecution, we cannot find a clear definition of means of evidence in any of the legislative acts that are part of the investigative complex. The only source that offers a definition is the Evidence Code [21], a separate act from the Code of Criminal Procedure. It reveals that evidence "*denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation, is proved or disproved, and without prejudice to the foregoing generality, includes statements by accused persons, admissions, and observations by the court in its judicial capacity*" [21, Art. 4]. If we refer to Article 194 of the Code of Criminal Procedure, the admission of evidence in judicial proceedings to establish the

truth in a case must be made without unfair treatment of the accused or witnesses. Evidence is not admitted if it does not tend directly or indirectly to prove or disprove the charge, and it must be administered in the specific circumstances of the case.

In reality, none of the laws provides a clarified chain of custody of evidence. Article 89(2) of the Evidence Code only specifies that evidentiary material must be kept in appropriate places by the person responsible, and improper custody represents either a failure to demonstrate a legitimate origin, or the circumstances prove the nature of a probable origin. These aspects raise the legitimate question of whether there truly a clearly defined chain of custody is, since most evidence that reaches the courts lacks proof of its legitimate origin.

As a final conclusion, this comparative analysis shows us that the South Sudanese system is a legalistic one, but incomplete. It can continue to focus on supplementing legislation regarding the valorization of special investigation results, referring to international human rights and European legislation in the field. Institutions must begin with a legislative reform in the field of special investigations, which would provide judicial guarantees and safeguards against abuses against the private lives of individuals. This must be followed by the development of institutional capacities to carry out these activities in a legal and professional manner.

Proposals and Recommendations. The analysis and research we have conducted show us that South Sudan faces multiple challenges regarding the valorization of special investigative measures. From this perspective, we suggest the following recommendations:

Inclusion of the concept in domestic legislation – It is necessary to include in domestic legislation, especially in the Code of Criminal Procedure and related legislation, the concept of special investigative measures, with a clear definition and exact parameters regarding the applicability of these measures, precisely establishing the manner of ordering them, the period of validity, and effective judicial control.

Adoption of the four fundamental principles – The inclusion of the four fundamental principles, namely legality, necessity, proportionality, and independent judicial control, in all activities related to special investigative measures.

Clarification of institutional responsibilities – Clearly establishing the duties and competences of the National Police and the National Security Service regarding special investigative activity, as well as introducing a unified procedure for obtaining, storing, processing, and disseminating to institutions with responsibilities in the field, emphasizing the chain of custody of evidence obtained from the valorization of these activities.

Strengthening institutional accountability – Developing and strengthening accountability by establishing an institution with clear responsibilities for monitoring and investigating abuses committed by institutions responsible for the applicability of special investigative measures.

Development of operational capacities – Developing the operational capacities of institutions with responsibilities in the field, in order to improve and access specific equipment for carrying out special investigative activities.

Specialized professional training – The United Nations Organization and/or the Ministry of Justice of South Sudan must emphasize the selection of specialists in special investigative measures within the mission in South Sudan, to provide training programs in this field for the National Police, the Security Service, prosecutors and magistrates, as well as designated personnel from institutions with responsibilities in the field, including to support legislative reform.

Allocation of additional resources for monitoring – Ensuring additional capacities, both in terms of human and financial resources, within international organizations such as the UN, NGOs, or other international commissions, to monitor human rights abuses in special investigative activity.

Promotion of institutional transparency – Promoting the transparency of institutions with competences in the field of special investigative activity, after the purpose and means have been achieved, by providing data and information intended for the public and the media, with the aim of improving inter-institutional collaboration and developing public trust in the operative-investigative institutions.

Requesting assistance from international experts – Requesting support from experts within the European Court of Human Rights and the United Nations Organization for support in the legislative reform process.

Bibliographical references[1]

1. Universal Declaration of Human Rights, adopted on December 10, 1948, by Resolution 217 A during the third session of the United Nations General Assembly.
2. European Convention on Human Rights. Available: https://www.echr.coe.int/documents/d/echr/convention_eng (accessed 06.04.2026).
3. Human Rights Report on South Sudan 2023, United States Department of State, Bureau of Democracy, Human Rights, and Labor, p. 2. Available: https://2021-2025.state.gov/wp-content/uploads/2024/02/528267-SOUTH-SUDAN-2023-HUMAN-RIGHTS-REPORT.pdf. (accessed 26.03.2026).
4. Vervale J.A. (2009). Special procedural measures and the protection of human rights. General report. In: Utrecht Law Review, Volume 5, Issue 2, pp. 74-76, Available: https://utrechtlawreview.org/articles/URN:NBN:NL:UI:10-1-101122 (accessed 26.03.2026).
5. Kruisbergen E.W., D. De Jong, Kleemans E.R.. (2011). Undercover Policing: Assumptions and Empirical Evidence. In: The British Journal of Criminology, Volume 51, Issue 2, pp. 394-412. Available: https://www.researchgate.net/publication/260490529_Undercover_Policing_Assumptions_and_Empirical_Evidence (accessed 26.03.2026).
6. Law No.59 of 29.03.2012 on special investigative activities. Published in: Official Gazette No.113-118, of 08.06.2012, Art.373, Amended by LP188 of 11.09.20, MO259-266/09.10.20 Art.557; in force 01.01.21, Art. 1.
7. Akuei Mayuen Deng Dut. Criminal Justice Response to Corruption in South Sudan. p.147. Available: https://www.unafei.or.jp/publications/pdf/RS_No98/No98_IP_South_Sudan.pdf (accessed 27.03.2026).
8. Judgment of the European Court of Human Rights in the case of Creangă v. Romania, of 23 February 2012, Application No.29226/03, Strasbourg.
9. Judgment of the European Court of Human Rights in the case of Rytikov v. Ukraine, of 23 May 2024, Application No.52855/19, Strasbourg.
10. Report "South Sudan: Reform Abusive Security Agency". Human Rights Watch, 19 February 2020. Available: https://www.hrw.org/news/2020/02/19/south-sudan-reform-abusive-security-agency (accessed 28.03.2026).
11. Human Rights Report, South Sudan: Extend UN Investigations, Stand Ready to Respond to Any Further Deterioration of the Human Rights Situation. Available: https://www.hrw.org/news/2026/02/19/south-sudan-extend-un-investigations-stand-

[1] We specify that all the legislation mentioned in the bibliography regarding South Sudan can be found on the official website of the Ministry of Justice and Constitutional Affairs (https://mofaic.gov.ss/laws-of-south-sudan/).

ready-to-respond-to-any-further (accessed 30.03.2026).
12. Remember Miamingi. Beneath the surface: South Sudan's Intelligence Services' Reign of Terror. 2025, pp. 4, 17, 27. Available: https://intelwatch.org.za/wp-content/uploads/2025/04/South-Sudan.pdf (accessed 30.03.2026).
13. Report "South Sudan: Revise National Security Service Bill" by Amnesty International, 27 July 2023. Available: https://www.amnesty.org (accessed 29.03.2026).
14. Judgment of the European Court of Human Rights, in the case of Roman Zakharov v. Russia, of 4 December 2015, Application No.47143/06, Strasbourg.
15. Judgment of the European Court of Human Rights in the case of Klass and Others v. Germany, of 6 September 1978, Application No.5029/71, Strasbourg.
16. Judgment of the European Court of Human Rights in the case of Gabriele Weber and Cesar Richard Saravia v. Germany, of 29 June 2006, Application No.54934/00, Strasbourg.
17. Kristina Trykhlib. The Principle of Proportionality in the Jurisprudence of the European Court of Human Rights. Scientific Material, 2020, pp.129-152. Available: https://www.researchgate.net/publication/344972923_THE_PRINCIPLE_OF_PROPORTIONALITY_IN_THE_JURISPRUDENCE_OF_THE_EUROPEAN_COURT_OF_HUMAN_RIGHTS (accessed 04.04.2026).
18. ECHR Case law on the principle of proportionality.
19. Directive (EU) 2016/680 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, of 27 April 2016, Art. 8.
20. The Transitional Constitution of the Republic of South Sudan, adopted on July 7, 2011, and entered into force upon the Declaration of independence (July 9, 2011).
21. Evidence Code of South Sudan, dated February 10, 2009.
22. South Sudanese National Police Law, in force since 2009.
23. National Security Service Law, in force since October 2014.
24. Code of Criminal Procedure of South Sudan, dated February 10, 2009.
25. Anti-corruption Law of South Sudan adopted in 2009.

CZU 343.43 **DOI: https://doi.org/10.5281/zenodo.20842375**

THE ROLE OF CRIMINAL POLICY IN COMBATING FORCED MARRIAGE: NORMATIVE APPROACHES AND INTERVENTION MECHANISMS

Diana MILEA,
PhD Candidate,
"Constantin Stere" University of European Political and Economic Studies,
Officer, Justice Interaction Directorate, General Police Inspectorate,
Republic of Moldova
ORCID: 0009-0002-9557-5327

Abstract

Criminal policy constitutes one of the principal instruments through which the contemporary state exercises its function of guaranteeing public order and protecting the fundamental rights of individuals. Forced marriage represents a practice through which a person is compelled to enter into or maintain a conjugal relationship against their will, constituting a serious violation of the right to self-determination, human dignity, and physical and psychological integrity.

This article systematically examines the role of criminal policy in combating this phenomenon, analysing both the normative criminalization approaches adopted at the international level and in the Republic of Moldova, and the concrete intervention and victim-protection mechanisms established within the national criminal policy framework. The research demonstrates that the effectiveness of criminal policy in this domain does not reside solely in the existence of criminalization norms, but depends decisively on institutional coherence, the specialization of justice-system practitioners, and the implementation of functional preventive and protective mechanisms.

The article also identifies the major challenges faced by authorities in identifying, investigating, and prosecuting forced-marriage cases, and proposes a set of concrete recommendations for strengthening the normative framework and institutional response capacity in order to effectively protect the rights of vulnerable persons against coercive matrimonial practices.

Keywords: criminal policy, forced marriage, intervention mechanisms, normative approaches, victim protection, gender-based violence.

ROLUL POLITICII PENALE ÎN COMBATEREA CĂSĂTORIEI FORȚATE: ABORDĂRI NORMATIVE ȘI MECANISME DE INTERVENȚIE

Abstract

Politica penală constituie unul dintre principalele instrumente prin care statul contemporan își exercită funcția de garantare a ordinii publice și de protecție a drepturilor fundamentale ale persoanei. Căsătoria forțată reprezintă o practică prin care o persoană este constrânsă să intre sau să mențină o relație conjugală împotriva voinței sale, fapt ce constituie o gravă violare a dreptului la autodeterminare, a demnității umane și a integrității fizice și psihice.

Prezentul articol examinează sistematic rolul politicii penale în combaterea acestui fenomen, analizând abordările normative de incriminare adoptate la nivel internațional și în Republica Moldova, mecanismele concrete de intervenție și de protecție a victimelor, rolul coordonat al instituțiilor statului, precum și provocările structurale care afectează eficiența aplicării politicii penale în practică. Cercetarea demonstrează că eficiența politicii penale în domeniu nu rezidă exclusiv în existența normelor de incriminare, ci depinde în mod determinant de coerența instituțională, de specializarea practicienilor din sistemul de justiție și de implementarea unor mecanisme preventive și de protecție funcționale.

Totodată, sunt identificate provocările majore cu care se confruntă autoritățile în identificarea, inves-

tigarea și urmărirea penală a cazurilor de căsătorie forțată, propunându-se un set de recomandări concrete pentru consolidarea cadrului normativ și a capacității de răspuns instituțional în scopul protejării efective a drepturilor persoanelor vulnerabile.

Cuvinte-cheie: politică penală, căsătorie forțată, mecanisme de intervenție, abordări normative, protecția victimelor, violență de gen.

Introduction. Guaranteeing the fundamental rights of individuals in the sphere of family relations constitutes a persistent challenge for contemporary legal systems, all the more acute given that coercive matrimonial practices continue to affect a significant number of persons globally, regionally, and nationally. Forced marriage stands at the confluence of several legal and social realities: it is simultaneously an expression of gender-based violence, a serious violation of human rights, and an offense demanding an adequate and effective criminal-law response from the state. Its specific character lies in the fact that it occurs frequently in the intimate sphere of the family and community, sheltered by traditional cultural norms or authority relationships, endowing it with a high degree of social and legal invisibility that is difficult to penetrate through classical criminal-law instruments.

The criminal policy of the state understood as the coherent ensemble of principles, strategies, legal norms, and institutional mechanisms through which public authority regulates the prevention, identification, sanctioning, and combating of criminal phenomena holds a central and indispensable role in responding to this challenge. Researcher Zhao Z. [17, p.1] defines criminal policy as a complex governance framework systematically developed and applied by the state to respond to the challenges generated by criminal phenomena, encompassing multiple legislative, institutional, and judicial dimensions. This perspective underscores that criminal policy does not reduce to the simple criminalization norm, but constitutes an integrated system of regulation, application, and permanent evaluation of the state's response to crime.

The role of criminal policy in combating forced marriage does not exhaust itself in the mere formal criminalization of the act in the criminal code, but requires the construction of an integrated framework of clear and precise norms, competent and well-prepared institutions, and functional procedural mechanisms capable of identifying victims, offering them effective protection, and efficiently holding accountable those who have committed the coercive acts. Researcher Bytko I.I. [18, p.145] highlights that the notion of criminal policy, although widely used in legal literature, lacks a universally accepted explicit statutory definition, which may generate inconsistencies in the practical application of criminal-policy measures. Savenok A.L. [19, p.2] complements this by arguing that criminal policy represents the essential component of the state's general anti-crime policy, forming the foundation on which the strategies of related fields are developed, including criminological policy, criminal procedural policy, and penalty execution policy.

The Republic of Moldova has followed a relevant legislative trajectory in this domain in recent years, adopting express criminalization norms for forced marriage and aligning itself with the standards of the Council of Europe Convention on preventing and combating violence against women and domestic violence, hereinafter the Istanbul Convention [4]. The timeliness of the subject is amplified by recent normative developments: legislative amendments extending victim protection to the digital sphere [10], the launch of the first national specialization program for justice professionals [11], and the continuation of domestic-law harmonization with European and international standards. The present study critically evaluates the relationship between the existing normative framework and

its practical effectiveness, identifies principal structural vulnerabilities, and formulates priority directions for strengthening criminal policy in this field.

Methods and materials applied. The research draws on a mixed and multidisciplinary methodology, combining in-depth legal-normative analysis with a criminological perspective and instruments specific to public-policy analysis, aiming at a comprehensive and nuanced picture of the investigated problem. This integrated approach is justified by the complex nature of the subject matter, which intersects substantive criminal law, criminal procedure, criminology, legal sociology, and violence-prevention public policies.

The exegetical method enabled systematic and rigorous interpretation of the relevant legal provisions of the Criminal Code of the Republic of Moldova [2], the Family Code [1], and the Law on Prevention and Combating Domestic Violence [9], ensuring a precise understanding of the content and scope of the analysed norms. The same method was applied to the international legal instruments binding on the Republic of Moldova, in particular the Istanbul Convention [4] and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [5].

The comparative method was used to evaluate the degree of convergence between national normative approaches and European standards of criminalization and victim protection, identifying both elements of alignment and persisting legislative gaps. This method also enabled leveraging good practices from other Council of Europe member states documented in EU Agency for Fundamental Rights reports [7]. The systemic method analysed interactions among the components of criminal policy criminalization norm, procedural intervention mechanism, and institutional structure revealing coherences and inconsistencies and identifying points of rupture that reduce overall system effectiveness.

The historico-legal method traced the legislative evolution of forced-marriage criminalization in the Republic of Moldova, situating recent reforms in the broader context of international commitments and European normative pressures. Documentary sources include specialized criminal-law and criminological literature [8; 12; 14; 15; 17], international human-rights compliance reports [13], and relevant public-policy documents [7; 10; 11]. The triangulation of these diverse methodological approaches ensured both the analytical rigour and the practical relevance of the findings.

Discussions and results obtained. An adequate understanding of the role of criminal policy in combating forced marriage requires, as a methodological premise, clarification of the fundamental operational concepts. Researchers Gill A. and Anita S. [8, p.5] argue that the phenomenon must be approached not as a simple private family-law problem, but as a structural form of gender-based violence with clear criminal implications and serious long-lasting social and psychological effects on victims. Forced marriage is defined by the absence of genuine consent from one or both partners consent that, according to international legal standards, must be freely expressed, informed, conscious, and uninfluenced by any form of external pressure. Tew Y. [12, pp.18-21] clarifies that the absence of consent does not necessarily presuppose an explicit verbal refusal, but may also result from a formal acceptance obtained through coercion or deliberate manipulation of the person's life circumstances, such that they no longer have a viable alternative to marriage.

From the perspective of constructing criminal policy, forced marriage raises three distinct categories of normative and institutional challenges. The first concerns criminalization: the criminal norm must define the material element of the offense with sufficient clarity and precision to cover the full diversity of coercive forms from direct physical violence to subtle psychological manipulation and economic control without creating uncertainties in legal classification. The second concerns investigation and proof: forms of psychological or economic coercion leave no visible material traces and are extremely

difficult to prove in proceedings that must respect fair-trial standards. The third concerns victim protection: criminal policy must guarantee the physical and psychological safety of the affected person throughout the entire judicial procedure. The EU Agency for Fundamental Rights report [7] confirms that autonomous criminalization of forced marriage distinct from related offenses offers significant advantages in statistical visibility of the phenomenon and coherence of prosecution practice.

The international legal architecture for preventing and combating forced marriage is structured across several regulatory levels of varying legal force. The Universal Declaration of Human Rights [6] proclaims in Article 16 the right of every person to marry on the basis of free and full consent, enshrining matrimonial freedom as an inalienable fundamental right. The CEDAW Convention [5] constitutes the basic framework instrument obligating state parties to adopt all appropriate measures to eliminate discrimination against women, including coercive matrimonial practices, and to guarantee the equal right to free consent to marriage.

The Istanbul Convention [4] represents the most advanced and comprehensive European instrument in the field, establishing concrete obligations for state parties in the matter of forced-marriage criminalization. Article 37 imposes the obligation to criminalize as a distinct offense the act of forcing a person to marry, including by transferring them to another country for this purpose, and to provide proportionate penalties. The Convention also requires efficient victim-protection mechanisms, accessible specialized assistance services, and systematic professional training programs for all practitioners involved in identifying, investigating, and resolving cases. Through ratification of the Istanbul Convention [4], the Republic of Moldova assumed these obligations and initiated a process of legislative alignment with significant consequences for the internal criminal normative architecture.

The importance of the international normative framework resides not only in the formal legal obligations it generates for states, but also in its function as a reference standard and evaluation instrument for assessing the adequacy of national criminal policies. States that fail to align their domestic legislation with international standards not only risk infringement procedures but also maintain legal systems incapable of offering real protection to affected persons. Comparative analysis reveals that states adopting autonomous criminal offenses dedicated specifically to forced marriage achieved better outcomes in prosecution rates and victim reporting than those relying solely on general coercion or domestic violence provisions.

The Republic of Moldova has followed a progressive legislative trajectory in criminalizing and sanctioning forced marriage, reflecting efforts to honour international commitments assumed through ratification of the Istanbul Convention [4] and other relevant instruments. The Constitution of the Republic of Moldova [3] guarantees at the constitutional level the freedom to marry and the right to free and full consent in forming a family the constitutional foundation underpinning the entire criminal and civil normative architecture in this domain. The Family Code [1] establishes marriage validity conditions, including the requirement for freely expressed consent unaffected by coercion, and fixes the minimum legal matrimonial age, providing the civil basis for criminal sanctioning of violations.

The Criminal Code of the Republic of Moldova [2] has been supplemented with express and distinct criminalization norms for forced marriage, providing differentiated criminal sanctions depending on the circumstances, with special aggravating factors when the victim is a minor or the offense is committed by multiple persons. This autonomous criminalization reflects the Moldovan legislator's deliberate choice to treat forced

marriage as a distinct criminal-policy problem, recognizing the specific gravity of this form of gender-based violence. The Law on Prevention and Combating Domestic Violence [9] complements the substantive criminal framework with procedural intervention and victim-protection mechanisms applicable in situations of matrimonial coercion.

Recent legislative amendments [10] extended victim protection to the digital sphere by criminalizing forms of violence through electronic means acknowledging that intimidation and coercion increasingly occur through technology and extended protection-order durations, strengthening judicial response capacity. A critical assessment reveals that, while formal alignment with Istanbul Convention [4] standards is largely achieved, practical application remains uneven: the absence of standardized early victim-identification procedures, lack of systematic statistical data on real incidence, and insufficient specialization of certain justice professionals constitute persistent obstacles to criminal-policy effectiveness.

The effectiveness of criminal policy in combating forced marriage must be measured primarily by the real capacity of intervention mechanisms to provide effective victim protection. The protection order is the central procedural instrument, enabling immediate removal of the aggressor from the victim's environment and imposing mandatory contact and proximity restrictions. Current legislation [10] permits issuance of a protection order for up to six months, with an emergency provisional order applicable for an initial twenty-day period, ensuring sufficient time for victims to make informed decisions in safety and for authorities to conduct necessary investigations.

The integrated victim-assistance system is structured on the principle of unified access to legal, psychological, and social services provided through inter-sectoral structures coordinated nationally by the National Agency for Prevention and Combating Violence [11]. Specialized centres function as single inter-institutional contact points, significantly reducing the administrative and bureaucratic barriers faced by victims and ensuring a coherent, multidisciplinary, individually-centred approach to each victim's needs. Access to free legal services and specialized psychological counselling is essential to support victims in overcoming the psychological, cultural, and socioeconomic barriers that frequently prevent them from reporting abuses or consistently participating in judicial proceedings.

The Republic of Moldova launched the first national specialization program for justice professionals in violence cases [11], an important step in strengthening institutional capacity. The program targets judges, prosecutors, and criminal-investigation officers and develops competencies for early identification of coercion indicators, sensitive interviewing of vulnerable victims, and coherent application of legal norms. Savenok A.L. [19, p.2] argues that criminal-policy effectiveness is fundamentally conditioned by the professional preparation quality of those who apply it particularly pertinent for offenses involving vulnerable victims and forms of coercion that are difficult to prove.

Beyond direct protection and assistance mechanisms, criminal policy includes preventive instruments aimed at reducing the phenomenon's incidence through information and education. Public awareness campaigns on fundamental matrimonial rights, gender-equality education in schools and communities, and training for social workers in contact with vulnerable groups are internationally recognized as effective long-term prevention tools [7]. Integrating these preventive instruments transforms criminal policy from a simple repressive tool into a complex social risk-management mechanism a transformation that modern criminological scholarship, including the contributions of Yu S. [14] and Wen Y. [15], identifies as essential for sustainable effectiveness.

Effective implementation of criminal policy in the domain of forced marriage requires the coordinated and complementary participation of a broad set of public insti-

tutions with distinct roles. Parliament holds primary responsibility for elaborating and permanently refining the legislative framework, ensuring coherence of criminal criminalizations and continuous alignment with international standards. Recent amendments introducing forced marriage as a distinct criminal offense in the Criminal Code [2] reflect the state's legislative commitment to combating this phenomenon.

The Government, through relevant ministries and the National Agency for Prevention and Combating Violence [11], bears direct responsibility for developing national strategies, allocating necessary resources, and continuously monitoring implementation. Police structures intervene on the front line with explicit obligations to proactively identify risk situations, promptly notify prosecutors, and ensure immediate victim protection. Prosecutors coordinate and supervise criminal investigations, exercising control over investigative-act legality and ensuring public criminal action against suspects. Courts fulfil essential repressive and preventive criminal-policy functions through their judgments, evaluating evidence and applying legally prescribed sanctions. Yu S. [14, p.25] underscores that effective criminal policy against complex criminal phenomena requires not only clear norms but also functional institutional coordination and impact-evaluation mechanisms.

Social-protection authorities, social assistance directorates, and child-protection services complete the institutional picture, identifying vulnerable groups, monitoring risk situations, and providing integrated support services. Structured cooperation with non-governmental organizations significantly amplifies the public system's response capacity, ensuring victim access to assistance even in communities with limited institutional presence. The fragmentation of responsibilities and absence of clear inter-institutional coordination protocols generate, in practice, delays and gaps in intervention with direct and serious consequences for victims' safety a systemic weakness that requires structural solutions rather than merely individual improvements.

The application of criminal policy in the domain of forced marriage faces persistent structural challenges that significantly affect the system's overall effectiveness. The gravest is the systematic under-identification of cases: official statistics certainly reflect only a reduced fraction of actual incidents, since victims frequently in situations of economic and emotional dependence are discouraged from reporting by fear of reprisals, socio-cultural stigmatization, or serious economic consequences [13]. This generates a significant dark figure that undermines the empirical foundation for public policies and limits authorities' capacity to rationally allocate available resources.

A second category of challenges concerns the legal and evidentiary complexity of investigations. Psychological coercion, emotional manipulation, and economic pressure leave no visible material traces and are extremely difficult to reconstruct probatorily, especially when victims come from socio-cultural environments where coercive practices are normalized. Possible overlap with other criminal offenses trafficking in persons, unlawful deprivation of liberty, general coercion can generate uncertainties about optimal legal classification and competent judicial authorities. Wen Y. [15, p.3110] notes that effective crime-prevention mechanism design requires rigorous analysis of the phenomenon's deep structural causes, not merely reaction to identified cases.

Modern trends in criminal policy for combating forced marriage reflect a significant paradigm shift: the transition from predominantly repressive approaches centered on post-facto criminal sanction toward integrated preventive strategies leveraging synergies among legal instruments, social mechanisms, and educational programs. The Republic of Moldova has aligned with this trend through legislative amendments extending protection to the digital sphere [10], strengthening procedural protection durations, and launching the national professional specialization program [11], demonstrating strate-

gic orientation toward more integrated, preventive, and effective criminal policy. These developments reflect growing awareness that criminal-policy effectiveness ultimately depends on capacity to prevent the conditions enabling forced marriage, not merely to sanction it once it has occurred.

Conclusions. The research undertaken permits formulation of relevant conclusions regarding the role of criminal policy in combating forced marriage in the Republic of Moldova. First, criminal policy plays an essential and irreducible role in the state's response to forced marriage, but cannot be effective by itself without the simultaneous existence of functional institutional structures, operational procedural protection mechanisms, and systematic programs for prevention and victim assistance. Formal criminalization, however well drafted normatively, remains insufficient if not accompanied by adequate institutional capacity for case identification, efficient investigation, and real victim protection.

Second, the Republic of Moldova has achieved notable legislative progress through autonomous criminalization in the Criminal Code [2], extension of protection-order durations, broadening of digital protection [10], and launch of the first national practitioner specialization program [11], largely aligning with Istanbul Convention [4] standards. These developments demonstrate the state's genuine commitment to combating the phenomenon and protecting vulnerable persons.

Third, criminal-policy effectiveness cannot be assessed solely through criminalization norms' existence but must be measured by the real impact of intervention mechanisms. Chronic case under-identification, insufficient specialization of certain practitioners, and absence of prevention programs specifically dedicated to the phenomenon remain significant structural vulnerabilities requiring priority attention. Functional inter-institutional cooperation and structured civil-society partnership are determining factors in the protection system's overall effectiveness, and the fragmentation of responsibilities generates delays and gaps with direct consequences for victims' safety.

Recommendations:

1. Development and adoption of a national action plan dedicated exclusively to preventing and combating forced marriage, distinct from the general gender-based violence strategy, with clear objectives, measurable performance indicators, implementation deadlines, and explicitly allocated financial resources.

2. Establishment of a unified, standardized, and mandatory system for collecting and statistically reporting forced-marriage cases across all involved institutions police, prosecution, courts, social services to enable periodic assessment of the phenomenon's real scale and evidence-based intervention adjustment.

3. Continuous expansion and deepening of specialized professional development programs for police officers, prosecutors, judges, and social workers, with emphasis on early identification of atypical matrimonial coercion forms, sensitive interviewing techniques for vulnerable victims, and strengthening efficient inter-institutional coordination.

4. Strengthening and geographic extension of the specialized assistance centre network for forced-marriage victims nationally, including in rural areas and high-risk communities, with an integrated offering of legal, psychological, social, and medical services accessible also to minors and persons in situations of multiple vulnerability.

Bibliographical references

1. Codul Familiei al Republicii Moldova nr.1316-XIV din 26 octombrie 2000. În: Monitorul Oficial al Republicii Moldova, 26.04.2001, nr.47-48 (210).
2. Codul Penal al Republicii Moldova nr.985-XV din 18 aprilie 2002. În: Monitorul Oficial al Republicii Moldova, 14.04.2009, nr.72-74 (195).

3. Constitutia Republicii Moldova din 29 iulie 1994. În: Monitorul Oficial al Republicii Moldova, 12.08.1994, nr.1 (1).
4. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 11 May 2011. Available: https://rm.coe.int/168046253e (cited 05.03.2026).
5. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 18 December 1979. Available: https://ombudsman.md/wp-content/uploads/2020/12/Nr.-18_.pdf (cited 05.03.2026).
6. Universal Declaration of Human Rights, 10 December 1948. Available: https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/rum.pdf (cited 05.03.2026).
7. European Union Agency for Fundamental Rights. Addressing forced marriage in the EU: Legal Provisions and Promising Practices. Luxembourg: Publications Office of the European Union, 2014. 96 p.
8. Gill A., Anita S. Forced marriage: Introducing a social justice and human rights perspective. London: Zed Books, 2011. 256 p.
9. Legea nr.45-XVI din 01 martie 2007 privind prevenirea şi combaterea violenţei în familie. În: Monitorul Oficial al Republicii Moldova, 18.03.2008, nr.55-56 (178).
10. Moldovan Parliament adopts comprehensive measures to protect women, journalists from violence, including digital violence. In: Moldpres. Available: https://www.moldpres.md/eng/society/moldovan-parliament-adopts-comprehensive-measures-to-protect-women-journalists-from-violence-including-digital-violence (cited 05.03.2026).
11. Republic of Moldova launches first national specialization program for justice professionals in cases of violence against women and domestic violence. In: ANPCV. Available: https://anpcv.gov.md/ro/communication/comunicate-de-presa/republica-moldova-lanseaza-primul-program-national-de (cited 05.03.2026).
12. Tew Y. And they call it puppy love: Young love, forced marriage and immigration rules. In: The Cambridge Law Journal, 2012, Vol.71, No.1, p.18-21.
13. United States Department of State. 2019 Country Reports on Human Rights Practices: Moldova. Available: https://www.ecoi.net/en/document/2026359.html (cited 05.03.2026).
14. Yu S. Research on the Application of the Criminal Policy of Early Crackdown on Petty Crimes in the Governance of Cybercrime. In: Modern Law Research, 2024, Vol.5, No.2, p.24-34.
15. Wen Y., Long Q., Zhang X. Designed for safety: characteristics and trends in crime prevention through environmental design research. In: Journal of Asian Architecture and Building Engineering, 2025, Vol. 24, No.4, p.3108-3031.
16. Crown Prosecution Service. What is a forced marriage? Available: https://www.cps.gov.uk/types-crime/violence-against-women-and-girls/honour-based-abuse/forced-marriage/what-forced-marriage (cited 05.03.2026).
17. Zhao Z. Theoretical Interpretation and Practical Dimension of the Chinese Path to Crime Governance Modernization. In: China Legal Science, 2025, Vol.13, No.2 (109), p.1-12.
18. Bytko Iu.I. Poniatie ugolovnoi politiki. In: Vestnik Saratovskoi Gosudarstvennoi Iuridicheskoi Akademii, 2015, No.6 (107), p.144-148.
19. Savenok A.L. Ugolovno-pravovaia politika i effektivnost ugolovnogo zakona. In: Materialy Mezhdunarodnoi Nauchnoi Prakticheskoi Konferentsii "Problemy sovershenstvovaniia pravovykh sredstv". Minsk, 13-14 oktiabria 2006, p.1-4.

CZU 341.231.14 **DOI: https://doi.org/10.5281/zenodo.20842697**

INTERNATIONAL STANDARDS ON THE RIGHT TO PRIVACY

Daniel CRISTEA,
PhD, Chief Police Commissioner,
Criminal Investigation Office, Buzau County Police Inspectorate, Romania
ORCID: 0000-0002-5786-2619

Abstract

Even though the right to privacy is in a moment of profound transformation, in a world dominated by intrusive technologies, surveillance and massive data flows, this right to privacy has become essential for democracy, freedom and human dignity. International standards are being consolidated, harmonized and constantly adapted to the challenges of the 21st century. Not only through global cooperation, but also through efficient mechanisms and a culture of respect for privacy, the real protection of this fundamental right is ensured.

The study conducted allows understanding the directions, methods and trends, including criminal procedure, from the point of view of historical evolution, of international standards, through international courts, such as the European Court of Human Rights, the Court of Justice of the European Union, the UN Human Rights Committee, regarding the right to privacy, demonstrating that the right to privacy has become a multidimensional fundamental right, which includes all the concepts of privacy: personal autonomy, data protection, dignity, integrity of identity, etc.

Keywords: right to privacy, international standards, concept, development, evolution, dimensions, interferences.

STANDARDE INTERNAȚIONALE PRIVIND DREPTUL LA VIAȚA PRIVATĂ

Abstract

Chiar dacă dreptul la viața privată se află într-un moment de transformare profundă, într-o lume dominată de tehnologii intruzive, supraveghere și fluxuri masive de date, acest drept al vieții private a devenit esențială pentru democrație, libertate și demnitate umană. Standardele internaționale se consolizează, se armonizează și se adaptează permanent pentru provocările secolului XXI. Nu numai prin cooperare globală, dar și prin mecanisme eficiente și o cultură a respectului pentru viața privată se asigură protecția reală a acestui drept fundamental.

Studiul realizat permite înțelegerea direcțiilor, metodelor şi tendințelor, inclusiv procesual-penale, din punct de vedere al evoluției istorice, a standardelor internaționale, prin instanțele internaționale, precum Curtea Europeană a Drepturilor Omului, Curtea de Justiție a Uniunii Europene, Comitetul ONU pentru Drepturile Omului, privind dreptul la viața privată, demonstrând că dreptul la viața privată a devenit un drept fundamental multidimensional, ce include toate conceptele vieții private: autonomia personală, protecția datelor, demnitatea, integritatea identității etc.

Cuvinte-cheie: dreptul la viața privată, standarde internaționale, concept, dezvoltare, evoluție, dimensiuni, ingerințe.

Introduction. The right to privacy is part of and constitutes the cornerstone of the protection of human rights at the international level, a development that is experiencing an increasingly complex evolution both jurisprudentially and doctrinally, being constantly reinterpreted according to the transformations produced. This evolution reflects the profound transformations of Western society and the international legal order. In other

words, from the first forms of protection of privacy in Roman law, the development occurred gradually, being influenced by the factors of change. International courts, such as the European Court of Human Rights (ECHR), the Court of Justice of the European Union (CJEU), the UN Human Rights Committee, interpret this protection of the right to privacy extensively, constituting the way in which states can apply and protect this right to privacy. Louis Henkin synthesized the essence of the right to privacy through the famous formula "the right to be left alone" [1, p. 226], emphasizing its negative dimension, namely the state's obligation not to arbitrarily interfere in the individual sphere. Alan Westin defined privacy from a modern perspective as "the desire of people to freely choose under what circumstances and to what extent they will expose themselves, their attitude and behavior" [2, p. 2], thus anticipating the centrality of personal data protection in the digital age, but the protection of privacy is currently explicitly enshrined in international instruments.

Methods and materials applied. The research methods include: the analytical method of legislation, at the international level, of the right to privacy and the role in its application at the national level; the historical method, from the point of view of evolution; the logical method, from the point of view of the deduction technique, and last but not least the empirical method, by presenting cases from the ECtHR jurisprudence.

Discussions and results obtained. The concept of privacy is today a fundamental right recognized in all modern legal systems, but this idea has not always existed as an autonomous notion. Its evolution is the result of a complex historical process, in which different legal, cultural and philosophical traditions have contributed to the shaping of a protected sphere of the individual. From the first forms of domicile protection in Roman law, to the enshrinement of the right to privacy in Art.8 of the European Convention on Human Rights (ECHR), the path of this concept reflects the profound transformations of Western society.

In Roman law there was no "right to privacy" in the modern sense, but incipient forms of protection of the personal sphere were found. Domus [3, pp. 413-414] – the home – was considered an inviolable space, and unauthorized entry was sanctioned by various legal actions. The interdicts of "vi", between "vis private" – violence between individuals and "vis publica" – violence against public order, [3, pp. 781-782], and the actions for iniuria [3, pp. 524-526] protected not only property, but also the dignity and authority of the pater familias. We observe this protection of the domicile as one of the first manifestations of the idea of private life, even if at that time, the Romans did not explicitly conceptualize the notion of privacy.

In the Judeo-Christian tradition, the family home – the dwelling – acquires a sacred dimension, being perceived as a protected moral space [4, pp. 74-78], and intrusion into family life was perceived as an attack on the moral order [4, pp. 110-115]. This view later influenced European conceptions of privacy.

In the Middle Ages, in the doctrine on the concept of private life, the author G. Duby [5], analyzes in detail the social structure, mentalities and organization of the domestic space, and from these descriptions one can observe the reconstruction and the way in which the medievals understood privacy, the protection of the home and the separation between public and private. Thus, the author emphasized that family life was the core of social stability, and the house was perceived as a closed, ordered and moralized space [5, pp. 1-40], private life at that time was closely linked to social status, privacy being a privilege only of the elite. [5, pp. 10-25].

An essential stage in the evolution of the concept is represented by English common

law. In the 17th century, in the decision of Semayne's Case (1604) the judge Sir Edward Coke formulated the famous principle "The house of every one is to him as his castle", consecrating the idea of the inviolability of the domicile, a man's home is his "castle", offering protection against forced entry, but allowing the intervention of the authorities (sheriffs) under certain conditions of civil enforcement, after summons [6]. This decision established for the first time, in a systematic way, the limits within which the authorities can enter a home and consecrated the idea that the domestic space is protected by law. The protection of private space thus becomes for the first time an explicit legal principle, close to the modern meaning of the right to privacy.

The modern concept of privacy emerged in the context of liberalism and the emphasis on individual autonomy only in the 19th century. The founding moment is considered to be the article by Samuel Warren and Louis Brandeis, The Right to Privacy (1890), which defines privacy as "the right to be let alone" [7, p. 193]. This formulation profoundly influenced American doctrine and later international doctrine.

In continental Europe, the development of the concept was influenced by the idea of human dignity, present in Kantian philosophy and in modern Civil Codes. The French Civil Code introduces the protection of image and reputation, and German jurisprudence develops the Allgemeines Persönlichkeitsrecht – general personality law – which includes the protection of privacy [8].

In the 20th century, the protection of privacy was internationalized. After World War II, the protection of privacy became part of fundamental human rights. The Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) enshrine the right to privacy as a universal right [9].

The culmination of the historical evolution of the concept is given by Art.8 ECHR, which guarantees the right to respect for private and family life, the inviolability of the home, the secrecy of correspondence, and the jurisprudence of the European Court of Human Rights (ECHR) has significantly expanded the scope of the notion of privacy, including both personal identity and physical and mental integrity, personal data, sexual orientation, professional life, public image [10].

After the Second World War, the right to privacy is enshrined in fundamental international instruments: Universal Declaration of Human Rights (1948) – Art.12; International Covenant on Civil and Political Rights (1966) – Art.17; European Convention on Human Rights (ECHR) – Art.8; International Covenant on Civil and Political Rights (ICCPR) – Art. 17, thus guaranteeing respect for private life, family life, home and correspondence, establishing both the limits of state interference and positive obligations of protection.

These instruments mark the transition from fragmentary protection to universal recognition of privacy as a fundamental right. However, the way of interpretation differs between the UN system and the European system. Thus:

1. Art.17 ICCPR is supervised by the UN Human Rights Committee, a quasi-judicial body, in which the committee formulates general recommendations and resolves individual communications, but cannot impose sanctions or binding reparation measures [9]. Art.8 ECHR is interpreted by the European Court of Human Rights, a judicial body in its own right, whose judgments are binding on Member States [11]. The Court can award compensation, impose legislative amendments and establish individual measures.

2. The UN Committee seeks to establish universal standards, applicable to all States, regardless of legal traditions or level of development. The interpretation is more general, principle-oriented, in order to accommodate cultural diversity [9]. The European Court interprets the Convention as a "living instrument", adapted to contemporary realities. Its

case law is detailed, casuistic and dynamic, especially in areas such as electronic surveillance, biometric data or gender identity [11].

3. The UN Committee recognizes the obligation of States to adopt legislative and administrative measures to protect privacy, but in a less detailed manner [9].

The European Court has developed a complex doctrine of positive obligations, establishing concrete standards in cases such as:

– Obligation to protect vulnerable persons [12] – ***X and Y v. Netherlands*** (1985);

– Obligation to ensure procedural safeguards against surveillance [13] – ***Rotaru v. Romania*** (2000);

– Obligation to prevent domestic violence [14] – ***Opuz v. Turkey*** (2009);

– Obligation to protect medical data [15] – ***I. v. Finland*** (2008).

4. The UN Committee has issued recommendations on digital surveillance, but the approach remains principled, without detailed technical standards. In contrast, the European Court has developed a rich case law on: mass surveillance (***Zakharov v. Russia***, 2015) [16]; interceptions (***Kruslin v. France***, 1990) [17]; monitoring at work (***Bărbulescu v. Romania***, 2017) [18]; etc.

At the end of the 20th century and the beginning of the 21st century, there was an expansion of privacy protection in the digital age, which was determined by the massive processing of personal data, due to the emergence of digital communication technologies. In this context, the first international instrument on the protection of personal data appeared, Convention 108 (1981), adopted in 1981 by the Council of Europe [19]. Subsequently, the European Union adopted Directive 95/46/EC, and in 2016 the General Data Protection Regulation (GDPR). The ECHR also, through its case law, extends the protection of privacy to areas such as: biometric data (***S. and Marper v. the United Kingdom***, 2008, in which the Court established that the indefinite retention of genetic data of unconvicted persons constitutes a disproportionate interference with private life [20]. This judgment prompted states to rethink their DNA data storage regimes, imposing clear limits on the duration and purpose of processing); electronic surveillance (***Zakharov v. Russia***, 2015 – the Court condemned mass surveillance systems that allow authorities to have uncontrolled access to private communications) [16]; gender identity (***M.K. v. France*** – the Court reiterated that biometric data are extremely sensitive and their storage in police databases must be proportionate and justified) [21]; taking biological samples (***Pretty v. United Kingdom*** – the Court recognized the right to bodily self-determination as part of private life) [22]. The established principle limits the possibility of authorities to impose coercive measures on a person's body, such as the forced taking of biological samples), etc.

The protection of private life, enshrined in Article 8 of the European Convention on Human Rights, is a fundamental element of the rule of law and an essential benchmark in defining the limits of permissible interferences in criminal proceedings. Since criminal investigations inherently involve intrusions into the private sphere of the individual, the European Court of Human Rights (ECHR) has developed a large body of case law aimed at ensuring a balance between the public interest in the repression of crimes and the protection of fundamental rights.

However, personal private life includes identity, bodily integrity, decision-making autonomy and the development of personality. In criminal proceedings, interferences with this sphere are frequent, in particular through the collection of biological samples, forensic medical examinations, and the collection of biometric data or behavioural surveillance.

However, criminal proceedings can profoundly affect family life, in particular

through measures such as preventive arrest, communication bans, supervision of relations between parents and children or the expulsion of convicted persons. For example, in the ECtHR case law, in ***Kroon and Others v. the Netherlands***, the Court extended the notion of family beyond marriage to include stable de facto relationships [23]. This interpretation obliges criminal authorities to assess the impact of measures on all forms of emotional cohabitation. Similarly, in ***Kutzner v. Germany***, the Court established that State interferences in the relationship between parents and children must be justified by an overriding public interest and must respect the principle of proportionality [24]. In another case, ***Beldjoudi v. France***, the Court examined the impact of the expulsion of a defendant on family life, underlining the need for an individual assessment of the circumstances [25]. Preventive measures must be applied with particular care when they affect family relationships, as they may have irreversible consequences for minors.

The home is rigorously protected against arbitrary intrusions, and criminal proceedings are one of the main contexts in which this protection is put to the test. For example, taken from the case law of the ECHR, the case of ***Camenzind v. Switzerland***, in which the Court established that searches must be strictly necessary and comply with procedural guarantees, including the authorisation of the judge [26]. In the case of ***Niemietz v. Germany***, the Court extended the notion of home to professional premises, considering that these too can represent a centre of private life [27]. Also, in the case of ***Buck v. Germany***, the Court emphasised that searches must be limited to the subject matter of the investigation and not turn into generalised search operations [28].

The doctrine emphasizes that the search is one of the most intrusive procedural measures, which is why it must be accompanied by solid guarantees: judicial authorization, clear delimitation of the object, the presence of witnesses and rigorous documentation of the operation [29, pp. 221-224]. In addition, the legal literature highlights the risk that digital searches may become excessively intrusive, given the large volume of information stored on electronic devices [30, pp. 65-70].

The protection of correspondence is one of the most sensitive dimensions of privacy in criminal proceedings, especially in the digital age. For example, in the case of ***Klass and Others v. Germany***, the Court recognized the legitimacy of secret surveillance for the purpose of combating crime, but established that it must be accompanied by adequate guarantees against abuse [31]. In ***Uzun v. Germany***, the Court examined the use of GPS devices in criminal investigations, concluding that electronic monitoring must be proportionate and limited in time [32]. Similarly, in ***Bărbulescu v. Romania***, the Court established that the monitoring of electronic communications must be foreseeable and proportionate, even in a professional context [18].

However, interceptions represent a profound interference with private life, which is why they must be subject to strict judicial review and be used only as a last resort, since there is a risk that modern technologies may allow for mass surveillance incompatible with democratic principles.

The case-law of the ECHR outlines a complex and evolving framework for the protection of privacy in criminal proceedings. The Court does not deny the need for interferences in the context of investigations, but insists on compliance with the principles of legality, necessity and proportionality. In the absence of these guarantees, criminal proceedings risk becoming an instrument of excessive intrusion, incompatible with democratic values.

Therefore, states must constantly adapt their legislation and judicial practice to European standards, ensuring a fair balance between the public interest and the fundamen-

tal rights of the individual.

The right to private life, enshrined in Art.8 ECHR and Art.17 ICCPR, represents one of the most important guarantees of the individual against arbitrary interference by the authorities. Although its protection is extensive in international law, this right is not absolute. Both international instruments and the case law of the European Court of Human Rights (ECHR) provide for the possibility of its restriction under strictly determined conditions. In criminal proceedings, where interferences with private life are frequent and often necessary for the proper conduct of the investigation, the analysis of the limits of this right becomes essential for understanding the balance between individual and collective interests.

This analysis completes the conceptual and evolutionary perspective of the right to private life, providing an integrated vision of the legal framework applicable in the context of criminal procedural measures.

Both Art.17 ICCPR and Art.8 ECHR permits interferences with private life, provided that they are: (a) prescribed by law, (b) necessary in a democratic society, (c) proportionate to the aim pursued, and (d) justified by a legitimate interest. Recognised legitimate interests include national security, public order, the prevention of crime, the protection of health or morals, and the protection of the rights and freedoms of others [33].

These criteria are interpreted strictly, as interferences with private life can profoundly affect the autonomy and dignity of the individual. In criminal proceedings, they apply directly to measures such as wiretapping, searches, electronic surveillance, data retention or the taking of biological samples.

To be legitimate, the interference must be "prescribed by law". The ECtHR has developed a consistent case-law on the quality of the law, establishing that it must be accessible, foreseeable and formulated with sufficient precision to allow the individual to adapt his or her conduct.

In ***Kruslin v. France*** (1990), the Court found that French legislation on telephone interception did not offer sufficient guarantees against abuse, as it did not clearly specify the conditions, duration and control of the measures [17].

This requirement is particularly important in the context of electronic surveillance, where the risk of excessive intrusion is high.

The notion of "necessity" implies the existence of a "pressing social need". In ***Handyside v. the United Kingdom*** (1976), the Court stated that interferences must be justified by "relevant and sufficient" reasons [34].

In matters of private life, the margin of appreciation of States is narrower when the interference affects essential aspects of personal identity, such as bodily integrity or gender identity. In criminal proceedings, necessity is assessed in relation to the seriousness of the offence, the weight of the evidence and the existence of less intrusive alternatives.

The principle of proportionality is the central criterion in assessing the limits of the right to private life. An interference is proportionate if it pursues a legitimate aim, is appropriate for achieving that aim, is necessary in the sense that there are no less intrusive measures available and strikes a fair balance between the public interest and the rights of the individual.

In **S. *and Marper v. the United Kingdom*** (2008), the Court found that the indefinite retention of genetic data of unconvicted persons was disproportionate, as it went beyond what was necessary in a democratic society [20]. This judgment is relevant to the informational dimension of privacy, emphasising that the State cannot collect and store sensitive data without clear limits.

Cases such as ***Klass and Others v. Germany*** [31] and ***Zakharov v. Russia*** [16] have set strict standards for secret surveillance. The Court has thus emphasised that generalised surveillance is incompatible with a democratic society and that any system of interception must be accompanied by robust procedural safeguards.

Searches, data retention and other intrusive measures must be strictly necessary and accompanied by appropriate safeguards. In criminal proceedings, the prevention of crime is one of the most frequently invoked grounds for interference, but the Court insists on the need for effective judicial review.

Likewise, privacy cannot be invoked to justify unlawful conduct, cannot prevent the exercise of the rights of others, and cannot be artificially extended to cover public activities.

These internal limits are essential to maintain the coherence of the system of fundamental rights and to avoid the transformation of the right to privacy into an instrument of obstruction of justice.

The right to privacy, as discussed above, should not be limited to the State's obligation to refrain from arbitrary interference, but also involves a complex set of positive obligations. These must derive from the need to ensure effective protection of privacy in a democratic society, especially in the context of contemporary technological and social developments. In criminal proceedings, where interference with privacy is frequent and unavoidable, the State's positive obligations become essential to guarantee the personal autonomy, dignity and integrity of the parties.

The State's positive obligations in the field of privacy are implicitly enshrined in Art.17 of the ICCPR and Art.8 of the ECHR, and have been extensively developed in the case law of the European Court of Human Rights. The Court has established that the protection of privacy requires States not only to refrain from interference, but also to adopt legislative, administrative and judicial measures to prevent violations by private actors [35]

This approach reflects the modern conception of human rights, according to which the State has an active role in ensuring the effectiveness of rights, not just in limiting its own interferences. In criminal proceedings, this active role translates into the obligation to create a normative and institutional framework that prevents abuses, protects victims and guarantees effective remedies.

States have an obligation to adopt a coherent and effective legislative framework that protects privacy in all its dimensions. This includes regulations on the protection of personal data, rules on electronic interception and surveillance, legislation on domestic violence, guarantees of the inviolability of the home and rules on the protection of image and reputation. For example, in the case of **X *and* Y *v. the Netherlands*** (1985), the Court found a violation of Article 8 of the ECHR because the national legislation did not provide adequate means to protect a vulnerable person against sexual abuse [12]. This judgment is emblematic of the State's obligation to create an effective regulatory framework capable of protecting vulnerable individuals and preventing serious interferences with their private lives.

In criminal proceedings, this obligation is reflected in the need for clear rules on searches, interceptions, access to data, the taking of biological samples and technical surveillance, all of which are measures with a direct impact on private life.

The protection of private life presupposes the existence of effective procedural mechanisms that allow individuals to challenge unjustified interferences, obtain compensation and benefit from rapid and effective remedies.

In criminal proceedings, this obligation is translated into the need for clear mech-

anisms to challenge interceptions, searches or other intrusive measures, as well as the obligation of judicial bodies to rigorously motivate interferences.

Positive obligations also include protection against interferences originating from private individuals or legal entities. This dimension is particularly relevant in the context of the press, companies processing personal data, digital platforms or employers.

In the case of ***Von Hannover v. Germany*** (2004), the Court established that the State has an obligation to protect the private life of public figures against excessive intrusions by the press [36]. This judgment is fundamental for the balance between private life and freedom of expression, including in the context of criminal proceedings where the press can influence the public perception of a person under investigation.

Family life entails enhanced positive obligations in the context of domestic violence. In the case of ***Opuz v. Turkey*** (2009), the Court found that the State has an obligation to adopt preventive and protective measures for victims of domestic violence [14].

This case-law has strengthened the link between private life and the protection of physical and mental integrity, emphasising that the State must actively intervene to prevent abuse, including through criminal law instruments.

The Court has recognised that private life also extends to the professional environment. In ***Bărbulescu v. Romania*** (2017), the Court established that employers must clearly inform employees about the monitoring of professional communications [18]. The state has an obligation to regulate these situations and to ensure a balance between the employer's interests and the employee's rights.

Conclusions. The study highlights the complex, evolving and multidimensional nature of the right to privacy in international law. Far from being a static concept, privacy reflects the profound transformations that have occurred in societies, primarily due to the development of technology, through the relationship between the individual and the state. In this perspective, the right to privacy captures its conceptual foundations and the interpretative dynamics that characterize it. The evolving interpretation, the absence of a rigid definition, the delicate balance between individual and collective interests, as well as the positive obligations of the state, outline the complex legal framework, adapted to the challenges of modern society. Overall, this protection of privacy represents an essential pillar of democracy and the rule of law, its consolidation becoming a priority in the context of such current transformations.

Through a broad, interdisciplinary and deeply structured analysis of the right to privacy in the context of criminal procedure, integrating doctrinal, jurisprudential and comparative perspectives from international, European and national law, the aim was to clarify the conceptual foundations of privacy, identify the limits and obligations of the state in protecting this fundamental right and assess how the mechanisms of criminal procedure can affect or strengthen the protection of privacy.

The interferences of criminal procedure with privacy are inevitable and must be strictly regulated. Intrusive measures, such as interceptions, technical surveillance, computer searches, access to data, etc., profoundly affect the private sphere of the individual. Therefore, the principles of legality, necessity and proportionality constitute essential benchmarks for assessing the legitimacy of these interferences. The ECHR jurisprudence has thus established clear standards regarding the quality of the law, procedural guarantees and the limits of surveillance, standards that must be integrated coherently into national legislation and practice.

In the context of accelerating digitalization and the expansion of emerging technologies, the protection of personal data has become one of the central challenges of global

governance. Regulatory fragmentation, differences in approaches between states and the proliferation of surveillance techniques require a profound rethinking of the international architecture in this area. To respond to these transformations, a series of convergent measures are needed, designed to strengthen both the global legal framework and the capacity of institutions to protect the fundamental rights of individuals.

A crucial first step is to strengthen the universal framework for data protection. In a world where cross-border information flows are continuous and private actors operate on a global scale, the United Nations should take a more active role in developing an international treaty dedicated to data protection. Such an instrument could establish minimum mandatory standards for surveillance, as well as effective monitoring mechanisms capable of ensuring compliance with the principles of necessity, proportionality and transparency.

In parallel, extending the applicability of Convention No.108 globally would contribute to harmonizing international practices. As the only modern and binding legal instrument in the field, the Convention provides a solid framework for the protection of personal data. Promoting the accession of non-European States, strengthening cooperation between national authorities and aligning standards with those provided for by the GDPR could transform the Convention into a central pillar of global data governance.

Another critical area is mass surveillance, which poses major risks to human rights. States must limit surveillance practices to strictly necessary situations, establish independent oversight mechanisms and ensure transparency, including through subsequent notification of data subjects. The prohibition of generalised and indiscriminate data collection is a fundamental condition for maintaining a balance between security and freedom.

In addition, national legislation must be rapidly adapted to new technologies. Artificial intelligence, facial recognition, algorithmic profiling, the use of biometric data and predictive systems generate unprecedented risks. Regulations must include impact assessments, algorithmic audits and strong safeguards against discrimination, to prevent abuse and ensure the ethical use of technologies.

Strengthening the rights of data subjects remains a central element of any data protection system. Facilitating access to data, simplifying rectification and erasure procedures, guaranteeing portability and protecting against automated decisions are measures that strengthen the autonomy of the individual and allow him to exercise control over his own information.

In an interconnected world, international cooperation becomes indispensable. States and international organizations must collaborate in investigating breaches, develop common mechanisms for responding to security incidents and promote digital education. Only through coordinated efforts can a secure and predictable global ecosystem be built.

Last but not least, data protection authorities must be institutionally strengthened, with adequate resources, independence and extended powers. At the same time, promoting a global culture of privacy, through digital education, empowerment and the development of a data ethic, represents the long-term foundation that respects the rights of the individual.

In conclusion, data protection can no longer be seen as a technical or sectoral issue, but as an essential element of contemporary democracy. Only through a global, coherent and human rights-oriented approach can a digital future be built in which innovation and individual freedom coexist harmoniously.

Bibliographical references

1. Henkin L. The age of rights. New York: Columbia University Press, 1990, 288 p.
2. Alan F. Westin. Privacy and freedom. Athenaeum. New York, 1967, p.7, In: Carp R., Şandru S., "The right to privacy and the protection of personal data". Bucharest: Ed. All Beck, 2004, 202 p.
3. Berger A. Transactions of the American philosophical society. New Series, Vol. 43, Part 2, 1953, 808 p.
4. Kelly J., Short A. History of Western Legal Theory. Oxford University Press, 1992, 484 p.
5. Duby G. The three orders: Feudal society imagined. University of Chicago Press, 1980, 382 p.
6. The judgment of Semayne's Case (1604), Court of King's Bench, Michaelmas Term, 1604, reported by Sir Edward Coke. Available: https://groups.csail.mit.edu/mac/classes/6.805/admin/ admin-fall-2005/weeks/semayne.html?utm_source=copilot.com (visited: 20.02.2026).
7. Warren S., Brandeis L. The right to privacy. Harvard Law Review, Vol. 4, No.5, 1890, pp. 193-220. Available: https://www.cs.cornell.edu/~shmat/courses/cs5436/ warren-brandeis.pdf and https://en.wikipedia.org/wiki/The_Right_to_Privacy_%28 article %29?utm_source=copilot.com (visited: 02.20.2026).
8. Bundesverfassungsgericht (Federal Constitutional Court of Germany), BVerfGE 34, 269 (1973) – "Lebach Case". Available: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/1973/06/rs19730605_1bvr053672en.html (accessed: 27.02.2026).
9. United Nations. Universal Declaration of Human Rights, 1948. Available: https://ro.wikipedia.org/wiki/Declara%C8%9Bia_Universal%C4%83_a_Drepturilor_Omului; International Covenant on Civil and Political Rights, 1966. https://legislatie.just.ro/Public/DetaliiDocument/82590 (visited: 20.02.2026)
10. ECtHR Niemietz v. Germany, 16.12.1992, No.13710/88. Available: https://hudoc.echr.coe.int/eng?i=001-57887; ECtHR Von Hannover v. Germany, 07.02.2012, No.40660/08 and No.60641/08. https://hudoc.echr.coe.int/eng?i=001-123588 (visited: 20.02.2026).
11. European Convention on Human Rights. Available: https://www.echr.coe.int/ documents/ d/echr/Convention_RON?utm_source=copilot.com (visited: 20.02.2026).
12. ECtHR X and Y v. Netherlands, Judgment of 26 March 1985, No.8978/80. Available: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57603%22]} (visited: 22.02.2026).
13. ECtHR Rotaru v. Romania, Judgment of 4 May 2000, No.28341/95. Available: https://legislatie.just.ro/Public/FormaPrintabila/00000G0UXP1HDY937IT0Z8ROTEPK9I2314 (visited: 22.02.2026).
14. ECtHR Decision Opuz v. Turkey, of 9 June 2009, No.33401/02. Available: https://hudoc.echr.coe.int/eng?i=001-123406 (visited: 22.02.2026).
15. ECtHR Decision I. v. Finland, of 17 July 2008, No.20511/03. Available: https://hudoc.echr.coe.int/eng?i=001-87510 (visited: 22.02.2026).
16. ECtHR Zakharov v. Russia, Judgment of 4 December 2015, No.47143/06. Available: file:///C:/Users/User/Desktop/Downloads/CASE%20OF%20ROMAN%20ZAKHAROV%20v.%20RUSSIA%20-%20[Romanian%20translation]%20by%20the%20SCM%20Romania%20 and%20IER.pdf (accessed: 22.02.2026).
17. ECtHR Kruslin v. France, Judgment of 24 April 1990, No.11801/85. Available: https://hudoc.echr.coe.int/eng?i=001-57626 (accessed: 22.02.2026).
18. ECtHR Bărbulescu v. Romania, Judgment of 12 January 2016, No.61496/08. Available:

https://www.juridice.ro >cedo-cauza (visited: 22.02.2026).
19. Convention 108, adopted in 1981 by the Council of Europe. Available: https://datepersonale.md (visited: 22.02.2026).
20. ECtHR S. and Merper v. Great Britain judgment, of 4 December 2008, no. 30562/04 and 30566/04. https://hudoc.echr.coe.int/eng?i=001-90051 (visited: 22.02.2026).
21. ECtHR M.K. v. France, 18 April 2013, no. 19522/09. https://hudoc.echr.coe.int/eng?i=001-119075 (accessed: 22.02.2026).
22. ECtHR Pretty v. the United Kingdom, 29 April 2002, No.2346/02. Available: https://hudoc.echr.coe.int/eng?i=001-60448 (accessed: 22.02.2026).
23. ECtHR Kroon and Others v. the Netherlands, 27 October 1994, No.18535/91. Available: https://hudoc.echr.coe.int/eng?i=001-57904 (accessed: 22.02.2026).
24. ECtHR Kutzner v. Germany, 26 February 2002, No.46544/99. Available: https://hudoc.echr.coe.int/eng?i=002-5571 (accessed: 22.02.2026).
25. ECtHR Beldjoudi v. France, 26 March 1992, No.12083/86. Available: https://hudoc.echr.coe.int/eng?i=001-57767 (accessed: 22.02.2026).
26. ECtHR Camenzind v. Switzerland, 16 December 1997, No.136/1996/755/954. Available: https://hudoc.echr.coe.int/?i=001-58125 (visited: 22.02.2026).
27. ECtHR Niemietz v. Germany, 16 December 1992, No.13710/88. Available: https://hudoc.echr.coe.int/eng?i=001-57887 (visited: 22.02.2026).
28. ECtHR Buck v. Germany, 28 April 2005, No.41604/98. Available: https://hudoc.echr.coe.int/eng?i=001-68920 (visited: 22.02.2026).
29. V. Dongoroz, et.al. Theoretical explanations of the Romanian Code of Criminal Procedure. Special Part, Volume II, Bucharest: Ed Academiei, 1976, 704 p.
30. Andrew Ashworth. Human rights, serious crime and criminal procedure. Sweet & Maxwell Ltd, 2002, p. 145.
31. ECtHR Klass and Others v. Germany, 6 September 1978, No.5029/71. Available: http://hudoc.echr.coe.int/eng?i=001-57510, and on http://ier.gov.ro/wp-content/uploads/fise-tematice/ FT-Protectia-datelor-cu-cara, p.2 of 24 (visited: 24.02.2026).
32. ECtHR Uzun v. Germany, 2 September 2010, No.35623/05. Available: https://hudoc.echr.coe.int/eng?i=001-119485 (visited: 24.02.2026).
33. UN Human Rights Committee. General Comment. No.16 on Art.17 of the ICCPR. Available: https://www.catalogoderechoshumanos.com/observacion-general-16-pidcp/?utm _source=copilot.com (visited: 24.02.2026).
34. ECtHR Handyside v. United Kingdom, 7 December 1976, No.5493/72. Available: https://hudoc.echr.coe.int/eng?i=001-57499 (visited: 24.02.2026).
35. ECtHR Airey v. Ireland, 9 October 1979, No.6289/73. Available: https://hudoc.echr.coe.int/eng?i=001-57420 (visited: 24.02.2026).
36. ECtHR Von Hannover v. Germany, 24 June 2004, No.59320/00. Available: https://hudoc.echr.coe.int/eng?i=001-61853 (visited: 24.02.2026).

CZU 343.265:004 **DOI: https://doi.org/10.5281/zenodo.20842770**

DIGITALIZATION OF THE SUPERVISION OF CONDITIONALLY RELEASED PERSONS: ELECTRONIC MONITORING BETWEEN PROCEDURAL EFFICIENCY AND RESPECT FOR PRIVATE LIFE

Ecaterina BORTA,
PhD Student,
"Ştefan cel Mare" Academy of Ministry of Internal Affairs,
Consultant to the Prosecutor, Hîncești Prosecutor's Office, Ialoveni Office,
Republic of Moldova
ORCID: 0000-0003-2026-863X

Abstract

This paper analyzes the impact of digital technologies on the social reintegration process of persons conditionally released from criminal punishment before the term. In a context marked by the need to streamline recidivism prevention mechanisms, electronic monitoring (GPS bracelets) emerges as a viable technical solution for ensuring public order. The article explores the duality of this instrument: on the one hand, its capacity to enhance judicial control and reduce detention costs, and on the other hand, the interference it exerts on the right to private life of the supervised person.

The methodology used combines the normative analysis of national legislation with European best practices in digital probation. The research results highlight the need to establish a proportional balance between the use of monitoring algorithms and the protection of personal data.

In conclusion, the paper argues that the digitalization of supervision should not replace social assistance, but serve as technical support that facilitates the transition from the penitentiary environment to full freedom, minimizing crime risks.

Keywords: conditional release, electronic monitoring, digitalization, private life, recidivism prevention, probation.

DIGITALIZAREA SUPRAVEGHERII PERSOANELOR LIBERATE CONDIȚIONAT: MONITORIZAREA ELECTRONICĂ ÎNTRE EFICIENȚĂ PROCESUALĂ ȘI RESPECTAREA VIEȚII PRIVATE

Abstract

Prezenta lucrare analizează impactul tehnologiilor digitale asupra procesului de reintegrare socială a persoanelor liberate condiționat de pedeapsa penală înainte de termen. Într-un context marcat de necesitatea eficientizării mecanismelor de prevenire a recidivei, monitorizarea electronică (brățările GPS) apare ca o soluție tehnică viabilă pentru asigurarea ordinii publice. Articolul explorează dualitatea acestui instrument: pe de o parte, capacitatea sa de a spori controlul judiciar și de a reduce costurile detenției, iar pe de altă parte, ingerința pe care o exercită asupra dreptului la viață privată al persoanei supravegheate.

Metodologia utilizată îmbină analiza normativă a legislației naționale cu bunele practici europene în materie de probațiune digitală. Rezultatele cercetării evidențiază necesitatea stabilirii unui echilibru proporțional între utilizarea algoritmilor de monitorizare și protecția datelor cu caracter personal.

În concluzie, lucrarea argumentează că digitalizarea supravegherii nu trebuie să înlocuiască asistența socială, ci să servească drept un suport tehnic ce facilitează tranziția de la mediul penitenciar la libertatea deplină, minimizând riscurile de criminalitate.

Cuvinte-cheie: liberare condiționată, monitorizare electronică, digitalizare, viață privată, prevenirea recidivei, probațiune.

Introduction. In the legal and social landscape of 2026, the prevention and combating of crime have become processes inseparably linked to the exponential evolution of information technologies. In an era of global digitalization, criminal law institutions must transition from traditional methods of control to intelligent mechanisms capable of ensuring a balance between the rigor of punishment and the imperative of social reintegration.

The regulation of the institution of conditional release in the Criminal Code reflects the orientation of modern criminal policy toward the individualization of sentence enforcement and the encouragement of the convicted person's social behavior. This measure does not constitute a mere act of clemency, but rather represents a complex legal mechanism through which the state conditions freedom on compliance with rigorous obligations, thereby justifying the need for an efficient supervision system. In this regard, Article 91 of the Criminal Code establishes the premises under which a convicted person may be conditionally released, where it is determined that the full execution of the sentence is no longer necessary for their correction. The implementation of electronic monitoring emerges as an essential complementary tool, facilitating the verification of compliance with the obligations imposed by the court in accordance with Article 91(4), which allows for the establishment of specific conduct-related measures during the probation period. Thus, the use of digital technology in supervision directly contributes to achieving the purposes of punishment set out in Article 61 of the Criminal Code: the restoration of social equity, the correction and resocialization of the convicted person, as well as the prevention of the commission of new offenses both by the convicted individual and by others. In this context, through the convergence of strict supervision and psychosocial support, the criminal framework facilitates the social reintegration of the individual while ensuring respect for the dignity of the convicted person [1].

The Enforcement Code establishes the legal framework for the implementation of measures ordered by the court, including the obligations of persons under supervision. In this regard, the execution of sentences within the community entails not only the formal compliance with obligations, but also the existence of effective control mechanisms. Electronic monitoring fits within the logic of modernizing the execution of criminal sanctions, offering authorities the possibility to objectively track the behavior of the supervised person. It contributes to strengthening the efficiency of enforcement mechanisms and to reducing reliance on traditional methods of control. In this context, Article 271^1 of the Enforcement Code details the rigorous procedure for implementing electronic monitoring for persons released from criminal punishment, establishing that it is not a punishment in itself, but rather a means of controlling compliance with the obligations and restrictions imposed by the court. The legal text regulates the technical conditions under which monitoring devices may be applied, stipulating the obligation of the individual to maintain the integrity of the equipment and to ensure its proper charging, under the sanction of revocation of conditional release in cases of repeated or intentional violations. At the same time, the Enforcement Code provides procedural safeguards to ensure that the use of electronic surveillance means does not infringe upon human dignity and does not endanger the health of the supervised individual. Therefore, the digitalization of control through this Code provides a solid legal basis for the individualization of sentence enforcement, transforming the supervision process from intermittent checks into continuous and objective monitoring, capable of generating direct evidence in cases of non-compliance with the established itinerary or entry into prohibited areas as determined by a court decision [2].

The Law on Probation No.8/2008 enshrines the central role of the probation service in the process of social reintegration of convicted persons. It regulates both supervision activities and support interventions, highlighting the complex nature of probation. Within this framework, electronic monitoring can be interpreted as a technical tool supporting the work of probation officers, without substituting the social component of the intervention. It enables better case management and a prompt response to potential violations of imposed obligations. In this context, conditional release from criminal punishment before the full term is served no longer represents merely an act of procedural clemency, but rather a strategic instrument of criminal policy, whose effectiveness depends critically on the quality of post-detention supervision. In accordance with the provisions of the Law on Probation No.8/2008, probation activity constitutes a set of supervision, assistance, and counseling measures aimed at preventing the commission of new offenses and facilitating the social reintegration of individuals. Thus, electronic monitoring operates as a complementary control measure, allowing real-time verification of obligations such as not leaving a locality or not frequenting certain places, thereby ensuring a balance between the requirements of public safety and the individual's right to resume their social and professional life. Through this mechanism, the law provides the necessary framework for conditional release to be accompanied by technological rigor, minimizing the margin of error in the process of post-detention supervision [3].

The central issue of the present paper concerns the analysis of how electronic monitoring can be harmonized with the right to respect for private life, as guaranteed by Article 8 of the European Convention on Human Rights. From the perspective of the protection of fundamental rights, the electronic monitoring of conditionally released persons constitutes an interference with the right to respect for private life, as enshrined in Article 8 of the European Convention on Human Rights. This interference derives from the intrusive nature of the technologies used, which involve the continuous collection and processing of data regarding the location and behavior of the supervised individual. According to the case-law of the European Court of Human Rights, the notion of "private life" has a broad scope, encompassing not only the intimate sphere of the individual, but also freedom of movement, personal autonomy, and the protection of personal data. Consequently, any form of technological surveillance must comply with the requirements set out in Article 8 §2, namely that it must be in accordance with the law, pursue a legitimate aim, and be necessary in a democratic society. The application of these criteria entails conducting a rigorous proportionality test, assessing whether the measure is appropriate and indispensable for achieving the intended aim, and whether less intrusive alternatives exist. Therefore, electronic monitoring can be considered compatible with Convention standards only insofar as it is limited in time, individualized according to the person's profile, and accompanied by effective safeguards against abuse, thereby maintaining a fair balance between the general interest and individual rights [4].

At the same time, the absence of a specialized conceptual framework does not allow for a unified approach by the authorities that should be directly involved in the process of social reintegration of detainees, so that the roles of state bodies and NGOs in this process are clearly delineated (as is the case, for example, in Latvia, Estonia, Poland, and other European countries). Undoubtedly, the establishment of the Probation Service represents an important step toward creating such a mechanism. By creating this structure, the state should not absolve itself of its other existing responsibilities in this field, but rather must create the premises and conditions for the development of such a mechanism, in which both public authorities and NGOs have clear and well-defined roles. A major issue hin-

dering the development of this mechanism is the insufficiency of financial resources for the development of the reintegration system, which has never been a priority within the state budget of the Republic of Moldova. Therefore, it can be concluded that this deficiency is unquestionably greater than the expenses required for the implementation of a viable system for the resocialization of detainees. From a financial perspective, it is more reasonable for the state to invest resources in the creation and development of a resocialization mechanism than to bear repeated losses in the absence of such a system [5, p.8].

Thus, the objective of the research is to demonstrate that digitalization should not lead to the dehumanization of the probation process, but rather serve as an advanced technical support that facilitates the transition of the convicted person from a regime of detention to full freedom, while minimizing risks to public order and security.

Through this approach, we aim to examine the current regulatory framework in the Republic of Moldova and to propose avenues for improving the legislation, so that the digitalization of supervision becomes a cornerstone of the national crime prevention strategy, transforming the "problem" of recidivism into a "solution" grounded in intelligent monitoring and continuous social support.

Methods and materials applied. The development of this research was based on the use of a set of scientific methods aimed at ensuring an objective and comprehensive analysis of the process of digitalizing supervision. The methodological approach is multidisciplinary, combining traditional legal analysis with modern technological perspectives specific to electronic monitoring systems.

The main method used is the comparative analysis method, through which models of best practices from other European jurisdictions were examined. This approach made it possible to identify the efficiency standards of Global Positioning System (GPS) technologies and the way in which they are integrated into recidivism reduction policies at the international level.

Secondarily, the logical method and the method of legal interpretation were applied. These served to examine, in a correlated manner, the criminal law provisions and those governing enforcement, with the aim of determining the limits of competence of probation authorities in the use of digital control mechanisms. Through processes of deduction and induction, the study sought to establish a balance between the need for public safety and the necessity of the individual's social reintegration.

From the perspective of the protection of fundamental rights, the research employed the case-law method. Through the analysis of relevant jurisprudence, the criteria of proportionality and necessity of technological interference in the sphere of private life were assessed. This method facilitated an understanding of how limitations of liberty through electronic means must be strictly regulated in order to avoid becoming abusive.

Discussions and results obtained. In a democratic society, the use of location-tracking algorithms and electronic monitoring bracelets must comply with the principles of legality, necessity, and proportionality. The case-law of the European Court of Human Rights has confirmed that the use of surveillance technologies, including GPS, is compatible with the Convention, provided that certain safeguards are respected. In the case of *Uzun v. Germany*, the Court emphasized that the duration and purpose of the measure are essential in assessing proportionality. This judgment provides an important benchmark for the regulation of electronic monitoring, demonstrating that technology can be used legitimately, provided that clear limits and adequate oversight of its application exist. It thus represents a crucial precedent for the digitalization of criminal supervision. The Court held that GPS monitoring constitutes an interference with private life, protect-

ed under Article 8 of the Convention, but stressed that such interference is justified if it serves public safety and the prevention of crime. A key aspect of the Court's analysis was the distinction between traditional (visual) surveillance and technological surveillance. Although the latter is significantly more intrusive due to its capacity for continuous and automated data collection, it is not incompatible with democratic values. The Court validated the monitoring measure because it was limited in time, subject to rigorous judicial control, and applied in a context where there were reasonable grounds to believe in the risk of recidivism or the commission of serious offenses. Therefore, for the probation system of the Republic of Moldova, the findings in *Uzun v. Germany* are clear: electronic monitoring of conditionally released persons must not be an automatic or perpetual measure, but a strictly individualized one, where the necessity of collecting location data is constantly balanced against the individual's right to rebuild their social life without disproportionate state interference [6].

The implementation of electronic monitoring through Global Positioning System (GPS) technologies represents a technological solution that promises "invisible supervision," capable of providing probation authorities with real-time data and deterring criminal behavior. The Council of Europe's recommendations emphasize that electronic monitoring should be used as an alternative to detention, rather than as an additional form of constraint. They underline the necessity of respecting human dignity and fundamental rights. At the same time, the recommendations highlight the importance of individualizing such measures and avoiding the automatic application of surveillance technologies. Monitoring must be tailored to each specific case, depending on the risks involved and the identified needs [7].

Official data confirm the expansion of the use of electronic monitoring in the Republic of Moldova, reflecting a clear orientation toward the modernization of the criminal justice system. The increase in the number of supervised individuals indicates the authorities' confidence in the effectiveness of this mechanism. These developments highlight the need to strengthen the normative and institutional framework in order to ensure the proper and proportionate use of technology. In this context, electronic monitoring emerges as a form of executing criminal measures within the community, allowing authorities to exercise effective control over conditionally released individuals without resorting to their isolation. The system operates through institutional cooperation between courts, police authorities, and the probation service, reflecting its complex and interdisciplinary nature. Another important result of the research lies in identifying the economic and social advantages of electronic monitoring. It reduces the costs of detention and helps maintain the social ties of the convicted person, thereby facilitating their reintegration into the community. In the Republic of Moldova, electronic monitoring is also used as a protective measure in cases of domestic violence, demonstrating its versatility and practical utility [8].

From a normative perspective, the introduction of electronic monitoring in the Republic of Moldova has been justified by the need to prevent violations of obligations imposed on persons under probation and to enhance the level of public safety. The implementation of GPS technology enables the real-time detection of deviations from established restrictions, thereby contributing to the efficiency of judicial control. This development has been driven by the necessity of aligning with European standards and improving the supervision of individuals under probation. The introduction of this system marks an important stage in the reform of sentence enforcement, contributing to the development of technical infrastructure, strengthening institutional capacity, and ensuring

the effective functioning of the mechanism [9].

Public sources reflect society's perception of electronic monitoring, highlighting both its advantages and the concerns related to its use. Public information contributes to increasing transparency and trust in the system. At the same time, media coverage of the implementation of this mechanism emphasizes its social impact and relevance for public policy in the field of justice. The analysis of the institutional framework establishes that electronic monitoring is not applied uniformly to all categories of convicted persons, but rather involves a selection based on criteria such as the severity of the offense and the assessment of criminological risk. This approach confirms the system's orientation toward the individualization of sentence execution, in line with European trends and existing practices in Romania [10].

Romanian doctrine emphasizes that effective probation presupposes a combination of control and social support. Electronic monitoring cannot replace the relationship between the probation officer and the supervised individual. In this regard, technology must be used as an auxiliary tool, supporting human interventions and contributing to the behavioral change of the individual. This demonstrates that mere technological surveillance is not sufficient for reducing recidivism; it must be combined with counseling programs and social reintegration measures. The research also highlights the risk of transforming electronic monitoring into a predominantly repressive instrument in the absence of complementary social support measures. Practical experience shows that the success of probation does not depend exclusively on the intensity of control, but on the system's ability to support behavioral change in the supervised person [11, p.85].

The effectiveness of offender resocialization is intrinsically linked to community involvement, probation being the mechanism that balances supervision with psychosocial assistance in order to reduce the risk of recidivism. A comparative analysis of probation systems reveals distinct approaches, adapted to the legal culture of each state. In England and Wales, the foundations were laid by the *Probation of First Offenders Act* of 1887, an act adopted by the House of Lords, which regulated the conditional release of first-time offenders. This act marked a key step by extending the activity of volunteer missionaries toward the supervision of minors in at-risk situations. However, the turning point was the *Criminal Justice Act* of 1948, which established the operational framework of probation services, a structure that remains relevant today under the authority of the Home Office. Subsequently, the legislation of 1991 introduced a "new philosophy of punishment," transforming the probation service from a simple monitoring agency into a central pillar of criminal justice, a concept largely maintained after the legislative amendments of 1993 and 1994. Similarly, the emergence of probation in the United States of America is inseparably linked to the private initiative of John Augustus. In 1841, he laid the foundations of the modern concept by providing personal guarantees for offenders, successfully supervising and assisting nearly 2,000 individuals over a period of 18 years. The success of this approach led to the formalization of the probation officer profession in Massachusetts in 1878. Currently, the American system is characterized by a unique structural complexity, often described as a "non-system" due to its fragmentation across more than 50,000 institutions operating independently at federal, state, and local levels. Unlike Anglo-Saxon models, the evolution in France is marked by an "original paradox," where probation services must execute a criminal sanction while having as their primary objective social reintegration. Established by the 1957 legislation in the form of Probation and Assistance Committees for Released Persons (CPAL), the system was reformed by the Decree of April 13, 1999. This reform unified the services into a single administrative entity: the Prison Integration and Probation Services, placing particular emphasis on juvenile

justice, coordinated by the Youth Protection Service. In this European context, the recent history of probation in Romania reflects a rapid evolution from a pilot-project phase in 1996 to national expansion following Government Ordinance No. 92/2000. Institutional development led to the establishment of the Probation Directorate within the Ministry of Justice, which manages county-level services attached to tribunals. The Romanian system was built around the need for alternative sanctioning measures aimed at relieving prison overcrowding while simultaneously ensuring social rehabilitation, reducing recidivism risk, and increasing public safety. In conclusion, although implementation mechanisms vary, the common purpose of these systems is to transform sanctioning from a mere punishment into a process of community-assisted social rehabilitation [12, pp.77-80].

Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data requires supervisory authorities to implement strict technical and organizational measures to prevent unauthorized access to location data. Given that such data may reveal sensitive information about private life, such as religious beliefs or health status inferred from frequented places, it is imperative that electronic monitoring systems ensure the confidentiality and integrity of information flows, prohibiting any processing that is not strictly necessary for the intended judicial purpose. A fundamental pillar of the protection of the monitored person's rights is the establishment of clear time limits for the storage and automatic deletion of collected data. According to the European regulatory framework, states must provide procedures for periodically reviewing the necessity of retaining data in the system, thereby avoiding the creation of permanent databases containing the movement histories of former prisoners. The absence of such safeguards regarding storage limitation turns technological surveillance into a disproportionate interference, which may negatively affect the resocialization process by maintaining constant psychological pressure on the individual. The legal regime established by Directive (EU) 2016/680 functions as a mechanism ensuring compliance with the standards set by Article 8 of the ECHR, transforming abstract principles of private life into concrete technical and procedural obligations. The Directive clearly stipulates that any processing of location data for the purpose of executing sentences must respect the essence of the right to private life, requiring states to prevent disproportionate surveillance through strict security measures and limited access to collected information. Thus, the compliance of electronic monitoring with European standards depends not only on the effectiveness of judicial control, but also on the system's ability to ensure that the digitalization of supervision does not become a permanent and unjustified interference with a person's home and correspondence, maintaining a fair balance between public safety and human dignity [13].

However, the effectiveness of electronic monitoring does not depend exclusively on legislative rigor, but also on the reliability of the technical infrastructure. An aspect often overlooked in legal discussions, yet essential in practice, is the vulnerability of systems to technical failures or cyberattacks. In the Republic of Moldova, rural areas with weak GSM coverage represent a major challenge for the stability of GPS bracelet connectivity. Signal loss may be incorrectly interpreted by the system as an attempt to escape or tamper with the device, generating serious legal consequences, such as the revocation of conditional release.

Therefore, I argue that criminal enforcement law must also integrate the principle *in dubio pro reo* in the interpretation of technological errors. Any system alert should be verified in light of the possibility of a network malfunction, so that no sanction is applied in the absence of clear evidence of bad faith on the part of the supervised person.

Conclusions. In conclusion, the digitalization of supervision through electronic

monitoring represents an essential pillar in modern crime prevention and control strategies, providing technical support that facilitates the transition from the penitentiary environment to full freedom. The study demonstrates that this instrument is effective only insofar as it complies with the standards of proportionality and necessity set out in Article 8 of the ECHR, avoiding the transformation of supervision into a purely repressive measure. The research findings emphasize that digitalization should not entail the dehumanization of probation, but rather function as an intelligent mechanism that combines technical surveillance with continuous social assistance, thereby maintaining a fair balance between the general interest and individual rights.

From the perspective of the protection of fundamental rights, it is essential that the implementation of electronic monitoring is not perceived as a measure of absolute control, but rather as a strictly regulated interference with the right to respect for private life, in accordance with the requirements of Article 8 of the European Convention on Human Rights. The intrusive nature of GPS technologies, which enable the continuous collection and processing of data regarding an individual's location and behavior, requires that any such measure be prescribed by clear and foreseeable law, pursue a legitimate aim, and be strictly necessary in a democratic society. Compliance with Convention standards requires a rigorous proportionality test, through which courts must ensure a fair balance between the imperative of public safety and personal autonomy, guaranteeing that surveillance is individualized and limited in time in order to avoid affecting the very essence of the right to private life.

For the future, it is necessary to strengthen the national regulatory framework of the Republic of Moldova in order to ensure a fair balance between the imperative of public safety and the protection of personal data of conditionally released persons. In this regard, we propose optimizing the legal framework by supplementing Law No.8/2008 on probation and the Enforcement Code with specific provisions regulating "Digital Probation". A first direction concerns the establishment of a mechanism for individualizing the intensity of GPS monitoring, which would allow for the gradual reduction of supervision as the person demonstrates real progress in social reintegration, thereby avoiding unnecessary stigmatization.

At the same time, it is imperative to introduce clear procedural safeguards that would allow subjects to challenge technical data in cases of system errors, thereby ensuring the right to a fair trial and protection against automated decisions lacking human review. Last but not least, we propose the development of a strict protocol for the management of location data, which would limit the storage period of such data and condition inter-institutional access on the existence of reasonable indications of the commission of a new offense. In essence, electronic monitoring should serve as an advanced technical support tool, transforming post-release supervision into an intelligent risk management process anchored in respect for human dignity and democratic values.

Electronic monitoring should serve as an advanced technical support tool, transforming post-detention supervision into an intelligent risk management process aimed at facilitating the full reintegration of the convicted person into society.

Moreover, the success of this system depends on rigorous institutional cooperation and the continuous adaptation of legislation to the exponential evolution of information technologies, thereby ensuring that the modernization of criminal justice remains anchored in respect for human dignity and democratic values.

In conclusion, the digitalization of supervision of conditionally released persons does not represent merely a simple adaptation to technological progress, but a structural transformation in the way the state manages social reintegration. The analysis carried out

demonstrates that electronic monitoring lies at the fragile intersection between procedural efficiency—manifested through reduced costs of detention and increased rigor of control—and the ethical imperative of respecting private life. Although the GPS bracelet provides unprecedented tools for preventing recidivism and ensuring public safety, it must not become a form of intrusion that undermines human dignity or hinders the psychosocial rehabilitation of the individual.

Therefore, the future of this mechanism in the Republic of Moldova depends on the ability of the legislator and probation authorities to use tracking algorithms not as an end in themselves, but as a technical support subordinated to the fundamental values of human rights, thereby ensuring a fair balance between digital control and respect for human freedom.

Bibliographical references

1. Codul penal al Republicii Moldova nr. 985 din 18.04.2002. În: Monitorul Oficial al Republicii Moldova, 13.09.2002, nr. 128-129, art. 195.
2. Codul de executare al Republicii Moldova nr. 443 din 24.12.2004. În: Monitorul Oficial al Republicii Moldova, 05.11.2010, nr. 214-220, art. 704.
3. Legea cu privire la probațiune nr. 8 din 14.02.2008. În: Monitorul Oficial al Republicii Moldova, 22.01.2016, nr. 13-19, art. 29.
4. Convenția Europeană a Drepturilor Omului, Roma, 4.XI.1950. http://www.echr.coe.int/documents/d/echr/convention_ron (accesat 25.03.2026).
5. Ardeleanu D., Racu A., Pistrinciuc V., Zaharia V. Reintegrarea socială a persoanelor liberate din locurile de detenție: Raport de monitorizare şi evaluare. Chișinău: „Cu drag" SRL, 2009, 36 p. ISBN 978-9975-405-22-5.
6. Hotărârea CEDO în cauza Uzun v. Germania (Cererea nr. 35623/05), 2 septembrie 2010. Disponibil: https://hudoc.echr.coe.int/eng?i=001-100293 (accesat 24.03.2026).
7. Recomandarea CM/Rec(2014)4 a Comitetului Miniștrilor către statele membre referitoare la supravegherea electronică. Disponibil: https://rm.coe.int/16806f4085 (accesat 24.03.2026).
8. Ministerul Justiției al Republicii Moldova. Mai multă protecție prin monitorizare electronică: peste 2 700 de persoane supravegheate în 2025. Disponibil: https://www.justice.gov.md/ro/content/mai-multa-protectie-prin-monitorizare-electronica-peste-2-700-de-persoane-inclusiv-960 (accesat 24.03.2026).
9. Ministerul Justiției al Republicii Moldova. Deținuții vor fi monitorizați electronic. Disponibil: https://www.justice.gov.md/ro/content/detinutii-vor-fi-monitorizati-electronic (accesat 24.03.2026).
10. Moldova.org. Persoanele aflate în probațiune vor fi monitorizate cu ajutorul brățărilor electronice. Disponibil: https://www.moldova.org/persoanele-aflate-in-probatiune-vor-fi-monitorizate-cu-ajutorul-bratarilor-electronice/ (accesat 24.03.2026).
11. Durnescu I. Probațiunea în România: evoluții și perspective. București: Editura Universitară, 2019.
12. Pântea A. Problemele dezvoltării legislației execuțional-penale (Note de curs). Chișinău: USEM, 2021, 117 p.
13. Directiva (UE) 2016/680 a Parlamentului European și a Consiliului din 27 aprilie 2016 privind protecția persoanelor fizice referitor la prelucrarea datelor cu caracter personal de către autoritățile competente în scopul prevenirii, depistării, cercetării, urmăririi penale a infracțiunilor sau al executării sancțiunilor penale [...]. În: Jurnalul Oficial al Uniunii Europene, L 119/89, 04.05.2016, 43p. Disponibil: https://www.dataprotection.ro/servlet/ViewDocument?id=1263 (accesat 27.03.2026).

CZU [342.7:314.15]:351.86 DOI: https://doi.org/10.5281/zenodo.20842856

MIGRATION, NATIONAL SECURITY AND THE RULE OF LAW: A COMPARATIVE PERSPECTIVE

Adrian BĂNCILĂ,
PhD, Associate Professor,
Faculty of Police,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0000-0743-8708

Abstract

The paper examines how the European Union (EU), the United Kingdom of Great Britain and Northern Ireland (UK) and the United States of America (US) balance migration control, increasingly invoked as a national security issue, with respect for the principles of the rule of law. In relation to the theory of securitization, the tendency to treat migration as a threat to security is present in all the mentioned states, with notable differences in terms of legal guarantees depending on the corresponding constitutional structure. Federal or quasi-federal systems, such as the US and the EU, have several internal balance mechanisms, which limit the action of the executive even in situations perceived as security emergencies. In contrast, the unitary system in the UK, especially after Brexit, offers the executive a wider margin of action, with fewer structural barriers to the adoption of restrictive measures. The conclusion of the paper is that constitutional architecture matters directly for the protection of migrants' rights and that security-focused discourse can, over time, erode the foundations of liberal constitutionalism, regardless of the national legal context.

***Keywords**: migration law; national security; rule of law; securitization theory; judicial review; non-refoulement; executive power.*

MIGRAȚIA, SECURITATEA NAȚIONALĂ ȘI STATUL DE DREPT: O PERSPECTIVĂ COMPARATĂ

Abstract

Materialul cercetează maniera în care Uniunea Europeană (UE), Regatul Unit al Marii Britanii și Irlandei de Nord (UK) și Statele Unite ale Americii (SUA) echilibrează controlul migrației, invocat tot mai frecvent ca problemă de securitate națională, cu respectarea principiilor statului de drept. Raportat la teoria securitizării, tendința de a trata migrația ca amenințare la adresa securității este prezentă în toate statele menționate, cu diferențe notabile în ce privește garanțiile juridice în funcție de structura constituțională corespunzătoare. Sistemele federale sau cvasi-federale, precum SUA și UE, dispun de mai multe mecanisme interne de echilibru, care limitează acțiunea executivului chiar și în situații percepute drept urgențe de securitate. În schimb, sistemul unitar din UK, mai ales după Brexit, oferă executivului o marjă mai largă de acțiune, cu mai puține bariere structurale în calea adoptării unor măsuri restrictive. Concluzia lucrării este că arhitectura constituțională contează în mod direct pentru protecția drepturilor migranților și că discursul centrat pe securitate poate eroda, în timp, fundamentele constituționalismului liberal, indiferent de contextul juridic național.

***Cuvinte-cheie**: dreptul migrației; securitate națională; stat de drept; teoria securitizării; control judiciar; non-refoulement; putere executivă.*

Introduction. During the nearly 80 years that separate the end of the last world war from the present moment, the phenomenon of international migration has under-

gone a fundamental transformation in public and legal perception. At first (and currently, traditionally), migration was viewed through the lens of humanitarian considerations (the right to international protection) or economic and demographic ones (in the case of legal migration), so that the beginning of the 21st century brought about its strategic repositioning in the sphere of national security. The tone was set by the terrorist attacks of September 11, 2001, followed by the refugee crisis of 2015-2016 and the geopolitical instability generated by the war in Ukraine, events that accelerated a global trend to treat cross-border human mobility not only as an administrative or social issue, but as a potential existential threat to territorial integrity, social cohesion and public order.

The recalibration of the global perception of international migration has profound legal consequences and highlights an increasingly acute tension between two crucial functions of the modern state. We refer, on the one hand, to the state's obligation to protect the security of its citizens, which justifies rigorous border control and the exclusion of elements considered hostile or dangerous, and, on the other hand, to the very essence of the rule of law, which implies the self-limitation of state prerogatives; in other words, any action by the executive branch, no matter how urgent it may be perceived, must be subject to the law, judicial review and international human rights standards, in particular, in relation to the present matter, the requirements of the principle of non-refoulement.

This article aims to analyze how this tension is managed in three distinct but interconnected jurisdictions: the European Union (EU), as a supranational entity sui generis; The United Kingdom of Great Britain and Northern Ireland (UK), in its new post-Brexit state of a unitary system completely independent of EU legislative constraints; and the United States of America (USA), as a classic model of a presidential federal republic. The selection of these three actors is not arbitrary; each represents a distinct constitutional tradition and institutional architecture that decisively influences the degree of permeability of the rule of law to the arguments produced by the security discourse.

The central hypothesis of the research is the following: although the tendency to securitize migration, that is, to construct it discursively and legally as a major threat to security, is a common phenomenon, its impact on the erosion of the guarantees of the rule of law varies systematically depending on the constitutional architecture and the density of institutional veto points. Political systems that disperse power across multiple levels of government (federalism, supranationalism) or that ensure robust judicial independence tend to resist executive pressures to circumvent legal procedures in the name of security urgency. In contrast, unitary systems, with centralized executive power and more flexible or deferential judicial review, are structurally more vulnerable to rapid and deep implementation of restrictive measures that can undermine the foundations of liberal constitutionalism.

To test this hypothesis, the article will first explore the conceptual and methodological framework, defining key terms such as "securitization", "rule of law" and "non-refoulement". Subsequently, the three case studies, the EU, the UK and the USA, will be analyzed in turn, following recent legislative developments, relevant supreme court jurisprudence and institutional balancing mechanisms. Finally, the conclusions will synthesize the comparative lessons and provide a normative assessment of the risks involved in subordinating the rule of law to security imperatives.

Methods and materials applied. The research is based on a qualitative, multidisciplinary methodological approach, combining the tools of dogmatic legal analysis with those of the political theory of international relations.

1. *Comparative method*. The main working tool is synchronic legal comparison. We

selected three jurisdictions that, although sharing a Western legal tradition and formal commitments to fundamental rights, differ significantly in terms of constitutional structure and allocation of powers in the field of migration and security. The comparison grid included the following operational variables: (a) Constitutional architecture: federalism (USA), supranationalism with shared sovereignty (EU), unitary system with parliamentary sovereignty (UK); (b) Standard of judicial review: proportionality (EU/UK) vs. deference/rational basis (USA in immigration matters); (c) Emergency and derogation mechanisms: the possibility for the executive to suspend procedural guarantees in crisis situations.

2. *Securitization Theory (Conceptual Framework).* To understand how migration becomes a security issue, we used the theoretical framework offered by the Copenhagen School, developed by Barry Buzan, Ole Wæver and Jaap de Wilde in the seminal work Security: A New Framework for Analysis [1]. According to this theory, security is not an objective state, but a speech act. A political actor (usually the executive) declares that a certain referent object (state, society, national identity) is existentially threatened by a certain phenomenon (migration) and, therefore, extraordinary measures that deviate from the usual rules and procedures are necessary. The success of securitization depends on the acceptance of this discourse by a relevant audience (parliament, public opinion, courts) [1, pp. 25-27]. Therefore, by appealing to the algorithm presented by the securitization theory, we believe that we can identify the justificatory rhetoric behind the legislative texts and we can, consequently, assess whether the measures adopted are proportional to the real threat or are the result of a political construction. In addition, we used Jef Huysmans' analysis of the "security continuum" in EU policies, which shows how migration has been discursively linked to terrorism and organized crime [2].

3. *The principle of proportionality (Legal assessment tool).* In order to objectively assess whether security measures adopted in the field of migration comply with the rule of law, we have used the classic proportionality test, as developed in European legal doctrine by Robert Alexy [3] and in the case law of the Court of Justice of the European Union (CJEU). This test involves the completion of four cumulative stages: (a) Legitimate aim – does the measure seek to protect a recognised fundamental interest?; (b) Appropriateness – is the measure effectively capable of achieving that aim?; (c) Necessity – are there alternative, less restrictive measures?; (d) Proportionality stricto sensu – is there a fair balance between the benefit obtained for collective security and the harm caused to the fundamental rights of the individual? [3, pp. 66-69].

4. *Materials used.* The analysis is based on an extensive corpus of primary and secondary sources, consisting of: (a) Primary legislation – Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); EU Pact on Migration and Asylum (Regulations 2024/1348, 2024/1351, 2024/1356); Illegal Migration Act 2023 (UK); Nationality and Borders Act 2022 (UK); Immigration and Nationality Act (USA); (b) Relevant case law – Judgments of the CJEU, the Supreme Court of the United Kingdom and the Supreme Court of the United States; (c) Specialized doctrine – reference works in the field of migration and security law, including contributions by Elspeth Guild [4], Cathryn Costello [5] and Daniel Thym [6].

Discussions and results obtained. The comparative analysis revealed a number of convergences in terms of discursive dynamics, but major structural divergences in terms of the legal transposition of this discourse and the system's capacity to correct the excesses of executive power.

1. The European Union: The fragile balance between harmonisation and securitization. The European Union faces a unique constitutional dilemma, rooted in the very ar-

chitecture of its founding treaties. On the one hand, Article 78 of the Treaty on the Functioning of the European Union (TFEU) mandates the development of a common asylum policy, with the explicit objective of "respecting the principle of non-refoulement". On the other hand, Article 4(2) of the Treaty on European Union (TEU) unequivocally stipulates that "national security remains the sole responsibility of each Member State" [7].

This dichotomy has been constantly explored and exploited by Member States located on the external borders of the Union (notably Greece, Italy, Hungary, Poland) to justify unilateral border closures or pushbacks, invoking precisely the national security safeguard clause. The recent evolution of the European legislative framework, materialized by the adoption of the Pact on Migration and Asylum (2024), reflects an attempt to resolve this blockage, but also a partial surrender to the security logic.

Outcome 1.1: Institutionalizing securitization through the new legislative framework. The new European migration rules, in particular Regulation 2024/1356, mark a major change in attitude. It is telling that the term "screening" was chosen, a word borrowed from medicine that actually means triage or filtration. This terminological choice is not just a matter of dictionary; it shows that Europe has begun to look at migration through a much more technical and restrictive magnifying glass. In practice, the migrant is no longer just a person seeking asylum, but a subject to a rapid "initial assessment", a filtering process designed to quickly separate accepted from rejected persons, even upon entry into the Union [8]. In the same vein, the regulation introduces the concept of the fiction of non-entry: persons subject to screening are considered, from a legal point of view, not to have yet entered the territory of the Member State, even if they are physically in a transit centre located on national territory. This legal fiction has a major practical consequence as it allows Member States to apply accelerated procedures and lower detention standards, arguing that the full guarantees of the right to asylum provided for by the EU acquis apply only after legal "entry" to the territory.

Similarly, Regulation (EU) 2024/1348 introduces a mandatory border procedure for certain categories of applicants, including those considered to be a risk to national security, drastically reducing examination deadlines and available remedies [9]. These legislative provisions demonstrate that the security logic is no longer a temporary exception, but has been organically integrated into common European asylum law. This trend has been criticised in the doctrine as representing a "missed opportunity" to build a truly solidarity-based and rights-based system [10].

Outcome 1.2: The role of the CJEU as guardian of the rule of law. Despite this worrying legislative development, the European Union benefits from a decisive structural advantage compared to the other jurisdictions analysed: the existence of a supranational Supreme Court (CJEU) with the authority to invalidate national administrative and even legislative acts that contravene the Charter of Fundamental Rights.

The case-law of the CJEU has demonstrated remarkable resilience. In the landmark judgment in N.S. and M.E. (Joined Cases C-411/10 and C-493/10), the Court ruled that the presumption of respect for fundamental rights by Member States is a relative one. A Member State cannot transfer an asylum seeker to the State responsible under the Dublin Regulation if there are "serious grounds for believing" that the applicant would be exposed to a real risk of inhuman or degrading treatment in that State [11]. This judgment allowed the suspension of transfers to Greece and Hungary, forcing Member States to adjust their administrative practices. In the same vein, in the case J.N. (C-601/15), the Court ruled that the detention of an asylum seeker on grounds of national security requires

an individual assessment to establish that the person concerned represents a "genuine, present and sufficiently serious threat" to one of the fundamental interests of society [12].

More recently, in the case Commission v. Hungary (C-808/18), the CJEU penalised Budapest for drastically restricting access to the asylum procedure in the so-called "transit zones". The Court rejected Hungary's argument that these measures were justified by the protection of public order and national security, stressing that any restriction on the right to asylum must be proportionate and based on an individual assessment of the conduct of the person concerned, not on generalisations or the generic invocation of a threat [13].

Thus, the veto power represented by the CJEU (activatable either by the Commission or by national courts through the preliminary reference mechanism) acts as a structural brake on the accelerated erosion of the rule of law. The executive of a Member State cannot legislate in a legal vacuum; it is constrained by a supranational court applying a relatively rigorous proportionality test.

2. The United Kingdom: A Laboratory of Accelerated Erosion Post-Brexit. If the EU represents a model of "institutional friction", the United Kingdom, especially after its withdrawal from the Union on 31 January 2020, offers an almost ideal-typical example of accelerated legislative erosion of the rule of law in the field of migration. Leaving the EU removed the jurisdictional constraint of the CJEU and put an end to the direct applicability of the EU Charter of Fundamental Rights. In this new context, based on the traditional principle of parliamentary sovereignty (according to which no court can invalidate a law passed by Parliament), the British executive has embarked on a radical restructuring of the asylum system.

Outcome 2.1: Protection exclusion legislation. Two major pieces of legislation define the new British legal landscape:

a). The Nationality and Borders Act 2022 (NaBA 2022) introduced a differentiated system of protection, dividing refugees into "Group 1" (those who arrive directly from the conflict zone and, crucially – the conditions having to be met cumulatively – present themselves without delay to the British authorities) and "Group 2" (defined negatively, namely all those who are not included in the first category; therefore including those who have transited a safe third country). The latter benefit from a temporary status (30 months compared to 5 years for Group 1), severe restrictions on the right to family reunification (exceptions being allowed only in the case of "insurmountable obstacles") and a difficult access to permanent residence (10 years of residence compared to only 5 years for those in Group 1) [14]. This differentiation, although apparently administrative, sends a clear message of deterrence and penalization of secondary mobility.

b). The legal framework established by the Illegal Migration Act 2023 (IMA 2023) marks a transition from an asylum system based on individual assessment to an automatic exclusion regime. Under Section 2, the Act imposes an unconditional legal obligation (duty to remove) on the Home Secretary to arrange for the removal of any person who entered the UK by irregular means after 20 July 2023. This provision transforms the administrative procedure into a mandatory mechanism, removing the margin of appreciation of the authorities depending on the individual vulnerabilities of the person [15].

The inadmissibility of protection claims is regulated by Section 4, which explicitly prohibits persons falling within the scope of the Act from making asylum claims or invoking human rights as grounds for suspending removal. This procedural barrier is doubled by Section 5, which stipulates that the obligation to remove the person from the territory prevails over any claim for international protection or recognition of the status of a vic-

tim of modern slavery. Thus, the Act cancels the examination of the merits of the claims, making access to the procedures conditional on the method of entry into the country.

In terms of legality control, the IMA 2023 introduces, through Sections 38-50, a series of exclusion clauses from judicial review. These provisions severely limit the courts' power to grant interim measures to suspend expulsion orders pending the resolution of a dispute. According to Section 42, suspension of enforcement is permitted only in exceptional circumstances, where an imminent risk of "serious and irreversible harm" can be demonstrated, setting an extremely high standard of proof that restricts the judicial power's supervisory function over administrative acts [16].

Outcome 2.2: The Rwanda Case – The Judiciary vs. the Legislature. The flagship policy of this new approach is the Rwanda Migration and Economic Development Partnership, which provides for the forcible transfer of certain asylum seekers to Rwanda for the processing of their claims, without the possibility of returning to the United Kingdom.

In R (AAA and Others) v. Secretary of State for the Home Department [2023] UKSC 42, the United Kingdom Supreme Court demonstrated that, despite political pressures, the judiciary can act as a bulwark of the rule of law. The Court carefully considered the evidence on the functioning of the Rwandan asylum system and unanimously concluded that there were "substantial grounds for believing that there is a real risk" of asylum seekers sent to Rwanda being subject to indirect refoulement (return to their country of origin where they would face persecution) [17]. The Court's reasoning was strictly evidentiary and legal, not political.

However, the response of the British executive and legislature to this judicial defeat has been one that defies the very essence of the separation of powers. Instead of adjusting policy to meet the evidentiary standards set by the Court, Parliament has passed the Safety of Rwanda (Asylum and Immigration) Act 2024. This Act imperatively declares, by law, that Rwanda is a safe country and, even more seriously from a rule of law perspective, prohibits the courts from examining evidence that would contradict this legislative fiction [18]. This substitution of judicial finding of fact by legislative fiat strikes us as an impermissible interference with judicial review in the British system, with profound implications for the future of the separation of powers in the British state. We cannot help but notice the striking similarity to the way in which the Italian government acted in the case of the Rome court's decision regarding the operation of the processing centres for applicants for international protection established in the Republic of Albania; it simply decided by legislation in such a way as to render the court's decision ineffective [19]. It is worth noting that since winning the 2024 general election and forming a new government, the Labour Party has cancelled the Rwanda scheme and announced that it will redirect the money allocated to the scheme to fund a new border agency. Only four people went to Rwanda under a separate voluntary removal programme and none under the Rwanda scheme [19]. This does not change the fact that the Rwanda law was not repealed, nor the way in which the UK Parliament acted against one of the pillars of British democracy.

3. United States of America: Judicial Deference as a Systemic Vulnerability. The United States offers a paradoxical case study. On the one hand, the US Constitution establishes a rigid separation of powers and a robust tradition of judicial review. Thus, although not explicitly mentioned in the text of the Constitution, the concept of judicial review has become the cornerstone of American democracy, being a power implicitly derived from the role of the courts and from the supremacy clause of the fundamental law. This authority was historically consolidated by John Marshall's landmark decision in the case of Marbury v. Madison (1803), definitively establishing that the judiciary has the

final say in interpreting legality. Paradoxically, although it is viewed as the "least dangerous" branch of power, since it controls neither the financial resources of the state nor the enforcement force, the judiciary acts as an essential arbiter. It oversees both federal and state actions, using rigorous standards (such as the test against arbitrary decisions) to prevent administrative abuses and to protect individual rights against any excess of executive or legislative powers.

On the other hand, in the specific field of immigration, a jurisprudential doctrine operates that largely nullifies these guarantees: the Plenary Power Doctrine.

Outcome 3.1: The Origin and Persistence of the Plenary Power. This doctrine has its origins in notable 19th century cases such as Chae Chan Ping v. United States (1889), known as The Chinese Exclusion Case. The U.S. Supreme Court ruled that the power to exclude aliens from the national territory is "an incident of sovereignty" that belongs exclusively to the political branches (Congress and the President) and cannot be subject to constitutional judicial review [20]. Although deeply criticized in the doctrine for its racist origins and for its incompatibility with the evolution of fundamental rights, the doctrine of the plenary power has never been completely abandoned by the Supreme Court [21]. It has been expanded to cover not only the admission but also the expulsion of aliens.

Outcome 3.2: Trump v. Hawaii and the Height of Deference. The practical consequences of this doctrine are perfectly illustrated by the 2018 Decision in the case of Trump v. Hawaii [22]. During his first term, President Trump issued an executive order restricting entry into the United States by citizens of eight countries, six of which were predominantly Muslim. The executive order was justified under Section 212(f) of the Immigration and Nationality Act (INA), which grants the President broad authority to suspend the entry of any class of aliens if their entry would be "prejudicial to the interests of the United States" [23]. Despite extensive evidence of President Trump's discriminatory campaign statements (including his promise of a "Muslim Ban"), the Supreme Court, by a 5-4 majority, upheld the ban. The majority opinion applied the most deferential standard of constitutional review, rational basis review, and refused to look beyond the formal text of the executive order, which was religiously neutral. The Court accepted the executive's justification that the ban was necessary for national security, to allow for an assessment of the ability of the countries concerned to provide adequate information for screening travelers. The given case, illustrates a recurring phenomenon in the American legal architecture, namely that the executive's invocation of "national security" tends to act as an almost impenetrable bulwark against substantive judicial review. This de facto immunity is not an accident, but the result of a convergence between the broad statutory powers granted by Congress and a deep constitutional deference on the part of the courts. In practice, when the president or federal agencies justify a measure on the imperative of protecting national security, judges often adopt a self-imposed position of restraint. Such an attitude is based on the premise that the political branches possess the expertise and information necessary to assess external risks, elements that are often missing from the courts' arsenal. As a result, judicial review is often reduced to a mere formal review, leaving the substance of the decisions unsupervised. This legal shadow zone poses serious challenges to the rule of law, as it allows security considerations to prevail over the protection of individual rights, transforming executive discretion into a sphere of action that is almost unencumbered by constitutional scrutiny.

Outcome 3.3: Alternative Use of the Legal Framework – The Case of Title 42. Another major systemic vulnerability identified in the research is the ability of the executive branch to completely circumvent formal asylum law by using legal powers in related ar-

eas. In March 2020, under the pretext of the COVID-19 pandemic, the Trump administration invoked a public health law (Title 42 of the Public Health Service Act) to authorize the summary deportation of migrants encountered at the land border, without allowing them access to the asylum procedure or an individualized assessment of the risk of persecution. In the three years of its implementation, over 2.8 million people were deported under this authority [24]. Although lower courts imposed some limitations, the Supreme Court allowed the policy to remain in place for an extended period [25], demonstrating once again the judiciary's reluctance to counter executive action on border control issues.

Conclusions. The comparative analysis of the interaction between migration, national security and the rule of law in the European Union, the United Kingdom and the United States of America allows for the formulation of clear conclusions that validate the central hypothesis of the research.

1. Securitization – a global phenomenon, but with variable legal impact. First, the research confirms that the tendency to treat migration as a threat to security is a common phenomenon in all three jurisdictions analyzed. The language of "urgency", "crisis" and "border protection" has deeply penetrated the political discourse and the preambles of recent normative acts, from the acts included in the EU Pact on Migration and Asylum of 2024 to the UK Illegal Migration Act of 2023. This security rhetoric has consistently served as a justification for the adoption of measures that restrict classical procedural guarantees and increase the discretionary power of the executive.

2. Constitutional architecture as a determining variable. Secondly, and this is the central result of the study, the way in which this security pressure translates into the effective erosion of the rule of law is dictated by the constitutional architecture and the density of institutional veto points.

The European Union, by its multi-level nature and by the existence of an independent supreme court (CJEU) that applies a rigorous proportionality test, has internal balance mechanisms that limit the action of the executive. Even if new regulations incorporate securitization elements (such as the fiction of non-entry), they are constantly subject to the risk of being censored or restrictively reinterpreted by the European judiciary. This system creates an institutional friction that prevents a rapid and uncontrolled slide towards arbitrariness.

The United Kingdom, especially after Brexit and the liberation from the jurisdiction of the CJEU, represents the opposite case. The unitary system, combined with the principle of parliamentary sovereignty, gives the executive a wide margin of maneuver and few structural barriers. The case of the Rwanda legislation is emblematic: Parliament can simply legislate against a judicial finding of fact, substituting a legal fiction for the evidentiary reality. This represents an advanced form of erosion of the separation of powers in the state.

The United States offers a paradoxical lesson. Although formally the federal system is full of veto points, in practice the Doctrine of Plenary Power and the deferential standard of judicial review (rational basis) nullify these structural advantages. As long as the executive invokes the magic formula of "national security", federal courts are structurally reluctant to intervene, leaving migrants in a veritable "constitutional vacuum" at the border.

3. Implications for the future of the rule of law. The final conclusion of this research is both descriptive and normative. Constitutional architecture matters directly and profoundly for the protection of migrants' fundamental rights. Systems that disperse power and ensure a truly independent judiciary are more resilient to the authoritarian

temptation to sacrifice the rule of law on the altar of security urgency.

In the long term, however, even in systems with a robust architecture, there is a risk that the security-centric discourse will gradually erode the foundations of liberal constitutionalism. The obsessive repetition of the idea that migration is a threat, corroborated with the creation of normalized exceptional legal regimes (such as border transit centers or expedited procedures without full rights), may lead to a cultural and legal paradigm shift. In this scenario, the exception tends to become the rule, and the sacred principle of non-refoulement risks becoming a simple declaration of intent, emptied of content in the face of the bureaucratic machinery of the security state. It is imperative that legal doctrine and the academic community remain vigilant and continue to subject anti-migration measures to the same rigorous test of legality and proportionality that applies to any other form of exercise of state power.

Bibliographical references

1. Buzan B., Wæver O., de Wilde J., Security: A New Framework for Analysis. Boulder: Lynne Rienner Publishers, 1998. 239 p.
2. Huysmans J. The Politics of Insecurity: Fear, Migration and Asylum in the EU. London: Routledge, 2006. 208 p.
3. Alexy R., Rivers J. A Theory of Constitutional Rights. Oxford: Oxford University Press, 2002. 462 p.
4. Guild E. Security and Migration in the 21st Century. Cambridge: Polity Press, 2009. 224 p.
5. Costello C. The Human Rights of Migrants and Refugees in European Law. Oxford: Oxford University Press, 2015. 464 p.
6. Thym D. The 'Refugee Crisis' as a Challenge of Legal Design and Institutional Legitimacy, Common Market Law Review, 2016. 31 p.
7. Treaty on European Union (consolidated version). In: Official Journal of the European Union, C 326, 26.10.2012, p. 13-390.
8. Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 on the screening of third-country nationals at the external borders. In: Official Journal of the European Union, L/2024/1356 (Accessed 22.05.2024).
9. Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union. In: Official Journal of the European Union, L/2024/1348 (Accessed 22.05.2024).
10. Peers S. The EU's New Pact on Migration and Asylum: A Missed Opportunity. In: European Journal of Migration and Law, 2021, Vol.23, No.1, pp. 1-23.
11. Judgment of the Court of Justice of 21 December 2011, Joined Cases C-411/10 and C-493/10, N.S. v. Secretary of State for the Home Department and M.E. v. Refugee Applications Commissioner, ECLI: EU:C:2011:865.
12. Judgment of the Court of Justice of 15 February 2016, Case C-601/15 PPU, J.N. v. Staatssecretaris voor Veiligheid en Justitie, ECLI: EU:C:2016:84.
13. Judgment of the Court of Justice of 17 December 2020, Case C-808/18, European Commission v. Hungary, ECLI: EU:C:2020:1029.
14. Nationality and Borders Act 2022 (c. 36), Sections 11-12. London: The Stationery Office, 2022.
15. Illegal Migration Act 2023 (c. 37), Section 2: Duty to make arrangements for removal. London: The Stationery Office, 2023.
16. Illegal Migration Act 2023 (c. 37), Section 52: Interim remedies. London: The Stationery Office, 2023.

17. R (AAA and others) v Secretary of State for the Home Department [2023] UKSC 42, para. 105.
18. Safety of Rwanda (Asylum and Immigration) Act 2024 (c. 8), Sections 1-2. London: The Stationery Office, 2024.
19. Băncilă A. Migrant Centers established in the Republic of Albania by Italy – Operationalisation, Controversies and Positions. In: The volume of the International Scientific Conference "Challenges and Strategies in Public Order and Safety", December 2024, Bucharest. Editura Universitară, Bucharest, 2024, vol. 2, ISBN 978-606-11-8771-3, pp.86-96 and Băncilă A., A possible failure of Italy's immigration management policy, the migrant centers in Albania. In: International Scientific Conference "Challenges and Strategies in Public Order and Safety", 11th Edition, Bucharest, November 20-21, 2025, Editura Universitară, Bucharest, 2025, ISSN 3119 – 9550, DOI: 10.5682/31199550, pp. 330-339.
20. Chae Chan Ping v. United States, 130 U.S. 581 (1889).
21. Legomsky, S.H., Immigration Law and the Principle of Plenary Congressional Power. In: Supreme Court Review, 1984, vol 1984, pp 255-307. David A. Martin, Why Immigration's Plenary Power Doctrine Endures, 68 Oklahoma Law Review, 29–56 (2015).
22. Trump v. Hawaii, 138 S. Ct. 2392 (2018).
23. Immigration and Nationality Act of 1952, 8 U.S.C. § 1182(f).
24. US Customs and Border Protection, Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions (FY 2020-2023). https://www.cbp.gov/newsroom/stats/nationwide-encounters (visited 04/01/2026).
25. Arizona v. Mayorkas, 143 S. Ct. 1312 (2023).

CZU 343.433:94(478)"1946/1947" DOI: https://doi.org/10.5281/zenodo.20842982

THE PHENOMENON OF CHILD KIDNAPPINGS DURING THE SOVIET-ENGINEERED FAMINE IN 1946–1947 ON THE TERRITORY OF MOLDAVIAN SOVIET SOCIALIST REPUBLIC (MSSR)

Simion CARP,
PhD, University Professor,
Senior Scientific Researcher, Institute for Scientific Research and Comparative Law,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-4772-8325

Alexandru PARENIUC,
PhD, Associate Professor,
Chair of Special Investigation Activities and Anti-Corruption,
Faculty of Law, Administration, Order and Public Security,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-6642-4610

Abstract
The current publication aims to bring back to the public's attention one of the most dramatic pages in recent history, when, according to estimates, approximately 200,000 people lost their lives in the post-war period. An attempt is made to bring to light alarming data and factual situations, likely to demonstrate the trauma that continues to mark entire families, a tragedy that has left deep traces in Moldovan families, transmitted from generation to generation. This dramatic period demonstrates deliberate policies of the Soviet regime, designed to control the population and reduce any form of opposition. At the same time, we tried to cultivate the urge to assume historical truth and preserve collective memory.

Keywords: crime fighting, crimes of communism, cannibalism, deportees, famine, crime investigations, criminal law, prevention, evidence, desecration of corpses, respect for human rights, freedoms and dignity, totalitarian regime, child abduction, repressions, suicide.

FENOMENUL RĂPIRII COPIILOR ÎN TIMPUL FOAMETEI DIN ANII 1946-1947, PROVOCATE ARTIFICIAL DE CĂTRE AUTORITĂȚILE SOVIETICE PE TERITORIUL RSSM

Abstract
Actuala publicație își propune să readucă în atenția publicului una dintre cele mai dramatice pagini din istoria recentă, când, potrivit estimărilor, aproximativ 200.000 de oameni și-au pierdut viața din perioada postbelică. Se încearcă aducerea în lumină a unor date și situații de fapt alarmante, de natură a demonstra trauma care continuă să marcheze familii întregi, tragedie care a lăsat urme adânci în familiile moldovenilor, transmise din generație în generație. Această perioadă dramatică demonstrează politici deliberate ale regimului sovietic, menite să controleze populația și să reducă orice formă de opoziție. Totodată, am încercat să cultivăm îndemnul la asumarea adevărului istoric și la păstrarea memoriei colective.

Cuvinte-cheie: combaterea criminalității, crimele comunismului, canibalism deportați, foametea, investigații infracțiuni, legea penală, prevenire, probe, profanare de cadavre respectarea drepturilor, libertăților și demnității umane, regimul totalitar, răpirea copiilor, represiuni, suicid.

Introduction. Over three decades have elapsed since the dissolution of the Soviet Union, but victims of the repressive communist totalitarian regime are still struggling to assert their rights. The existence of these unresolved cases illustrates the complexity of investigating crimes committed under communism and the broad spectrum of difficulties experienced by those persecuted by the Stalinist regime. Paradoxically, against this backdrop, certain nostalgic groups advance the incoherent idea of rebuilding the Soviet Empire, claiming that they allegedly lived better during that period. These propagandistic messages seek to justify the atrocities suffered by our compatriots and to glorify the criminal regime that held the territory of today's Republic of Moldova under military occupation for decades. Praising the Soviet totalitarian regime represents an insult to Bessarabians who were executed or imprisoned on the basis of politically fabricated charges, deported individuals, people deprived of their assets, and those unlawfully interned in psychiatric hospitals, all for resisting the occupation regime. The genocide reached its culmination in the Soviet-organized artificial famine of 1946–1947, during which hundreds of thousands lost their lives, and the survivors endured severe and unimaginable hardships.

Concerning the intentional aspect of the famine, we highlight that it did not arise only from unfavorable natural circumstances, but also from coordinated actions implemented by the Soviet authorities. The extreme level of degradation to which the population was subjected explains concrete examples of people being compelled to adopt desperate survival strategies. People brought to the limit of starvation were pushed into resorting to banned means of survival. The regime subjected the population to extreme conditions, sometimes leading to instances of cannibalism.

Methods and materials applied. The creation of this publication involved the use of theoretical, normative, and empirical data. Taking into account the specific and complex nature of the investigated topic, the present research was made possible through the application of several scientific research methods specific to criminal investigation theory: the logical method, the historical method, comparative analysis, systemic and statistical analysis, etc.

The purpose of the research. Is based on: an in-depth study of criminal, procedural, and special investigative regulations concerning child abduction during the famine, analyzed from historical, theoretical, and practical perspectives, highlighting trends and ideological specifics in this field; the shortcomings and challenges that appeared in the judicial practice of the Republic of Moldova, alongside proposed solutions, demonstrate that this dramatic period evidenced the Soviet regime's deliberate policies designed to control the population and suppress opposition.

Depending on the intended purpose, we aim to achieve the following objectives: a) research on the legal regulation addressing child abduction during the 1946–1947 famine; b) emphasis on famine as a mechanism of political control used to defeat population resistance and impose Soviet ideological doctrine; c) formulation of theoretical and practical solutions indicating that, in addition to natural factors, there was also a deliberate intent to break the resistance of those who rejected the new ideology of the "new man".

Discussion and results obtained. Reviewing the crimes committed by the Soviet totalitarian regime against our compatriots, the political dissident GH. Ghimpu remarked within a scientific forum: "...By means of force and terror, the representatives of the Russian-communist totalitarian occupation regime imposed a communist ideology on the Romanian population of the Republic of Moldova, introducing a foreign culture, history, and language to the native people of Bessarabia; they enforced collectivization, deported hundreds of thousands of citizens, and eliminated those who held liberal and democratic

ideas that were dominant in Bessarabia at the time of its occupation by the USSR (June 28, 1940 and August 24, 1944)" [1, p.53]. Reconstructing the sequence of events, we observe that after taking power in 1944, the new regime subjected individuals with different political views to political repression. Subsequently, in the 1946–1947 drought period, all food reserves were taken from the native population, leading to an unprecedented famine that cost the lives of over two hundred thousand people. Obviously, the party elite, experts invited from Soviet Russia, activists, and other privileged categories were supplied with food rations. Simultaneously, a large part of the population that did not command the confidence of the Soviet authorities was left to starve to death. Repressive institutions arrested individuals who, at the limits of their endurance, protested and showed their disapproval of the communist regime. They were accused of acting aggressively, engaging in conflicts with Soviet authorities, and breaching public order. Certain impoverished peasants who repeatedly requested food for their children were arrested and sentenced for anti-Soviet propaganda. The Soviet authorities were indifferent to the starving locals and, on the contrary, aimed to strip them entirely of willpower, transforming them into docile, depersonalized subjects of the regime. Nevertheless, torture by means of starvation generates multiple detrimental outcomes. Consequently, crimes typical of famine-related crises started to be recorded, such as violence, abduction, theft, robbery, and banditry.

Meanwhile, as the authorities delayed the distribution of food to the population, living conditions deteriorated significantly, leading to crimes including abduction, homicide, cannibalism, desecration of corpses, and suicide. Unfortunately, some individuals suffering from dystrophy were gradually transformed into predators willing to consume even their own kind. Many children were among those victimized by these criminals, who had already lost their human status. This research paper provides information on the phenomenon of child abduction during the 1946–1947 famine.

The investigation involved the study of works by local scholars who described this historical period, with particular attention to eyewitness testimonies. Declassified archival materials were examined and cross-checked with contemporary press sources and history textbooks published by Soviet authors. On the basis of this analysis, the falsification of historical facts by Soviet authors was established, and new pertinent evidence was identified for the investigation of communist crimes. This article presents excerpts from documents indicating that the Soviet authorities deliberately provoked the famine and did not take measures to eliminate factors that encouraged criminality in such crises, including the abduction of children and adults, who were killed by criminals for consumption of their flesh. Many of the abducted and murdered children were under the age of ten. Some became victims of violent attacks, while others were attracted by deceptive promises of food. Unfortunately, some of the perpetrators were people familiar to the victims, frequently their neighbors. Easily falling victim to criminals were orphaned children, those left by their parents, or those without supervision. During the research, cases were found of adults involving children in criminal activities, using them to lure victims. Simultaneously, it was established that crime trends were influenced by the Soviet authorities' hostile and discriminatory approach toward the native population, who were deliberately subjected to devastating living conditions in an attempt to physically eliminate individuals expressing national dignity. By means of the artificially caused famine and the violent actions of Soviet repressive organs, the communist totalitarian regime managed to depersonalize and demoralize part of the local population, bringing them to a level corelated to primitive tribes. Due to dystrophy and mental illnesses, they committed murders and consumed human flesh in order to survive by all means. The above-mentioned facts reveal that totalitarian regimes, seeking to stay in power, use tactics reminiscent of barbaric

tribes.

Referring to the criminogenic situation in countries under such regimes, Iurie Larii states that: "...nothing separates people as sharply as political disagreements. Political interests are, in most cases, linked to the pursuit of power, a process in which political opponents use extremely harsh methods and means" [2, p.120-128].

As previously indicated, one of the methods repeatedly applied by the Soviet authorities to suppress political opponents involved artificially provoking famine. Thus: "In 1920, the Bolshevik organization, which had only recently adopted the official name of the Communist Party, started establishing the policies that would ultimately regulate every aspect of everyday life". They were subjected to "work mobilization", meaning that they were obliged to work where, when, and as instructed by the government. Industrial enterprises were headed by directors appointed by the government. Across rural areas, Red Army troops forcibly confiscated peasants' grain and animals under the threat of arms. Shortages continued to make themselves felt, and virtually everything was rationed — food, clothes, even books and tobacco... Similar to food shortages, access to fuel was severely limited. In order to survive the freezing winter, city residents tore planks from fences and wooden houses to use as firewood. People cut down trees from urban parks and burned their books and household furniture for fuel... Sometimes, the cities looked deserted, like ghost towns. "The houses seemed to be the ruined crypts of forgotten graveyards", wrote a resident of Saint Petersburg. "The inhabitants moved [through the city] in a manner resembling living corpses [...]. Deprivation slowly consumed them, and death macabrely clasped their hearts in its claws" [3, p.268-269].

Any revolt was violently suppressed on the orders of the Bolshevik leader Vladimir Ilyich Lenin. According to Candace Fleming: "The situation had grown so desperate that, in March 1921, thousands of sailors, formerly the Bolsheviks' most ardent supporters, openly rose up against the communist authorities". Disappointed by the treatment of workers and peasants under Lenin's rule, they went into the streets demanding the freedoms the Soviet regime had stripped away: free elections, freedom of speech, freedom of the press, independent unions, and peasants' freedom to cultivate their land for their own benefit.

Lenin refused to allow anyone to challenge the power of the Soviets. Sending the Red Army against the rebellious sailors, he unleashed a bloody attack that raged for several days. When it was over, thousands of sailors were dead, and several hundred more were subsequently executed.

True to his fierce realism, Lenin saw the sailors' uprising as proof of a society in profound illness... However, Lenin died on 21 January 1924, and Stalin quickly seized control of the government. He promptly initiated a "purge", eliminating all former Bolshevik leaders, regardless of allegiance, by exile, execution, or assassination. At this point, Soviet Russia was entirely controlled by a ruthless leader committed to transforming the country into a world power, without consideration for the loss of freedoms or human life" [3, p.269-270].

The population's standard of living had worsened enormously. People continued to die of hunger, while the Soviet authorities concentrated on identifying so-called "enemies of the people", who were blamed for all irregularities: "from an ideological standpoint, it was deemed unacceptable to regard Stalin's administrative and political failures, or those of the Soviet leadership, as causes of the Soviet economy's numerous problems, which resulted from collectivization and the Five-Year Plans. These issues were attributed to large, non-existent conspiracies. In 1937, for example, the NKVD (People's Commissariat for Internal Affairs) uncovered an "extremely vicious form of sabotage", entirely fictitious, allegedly carried out by "veterinarians, livestock specialists, and laboratory assistants",

who were said to engage in "bacteriological subversion, infecting cattle, horses, flocks of sheep, and pigs with plague, foot-and-mouth disease, anthrax, brucellosis, anemia, and other infectious diseases", resulting, according to the NKVD, in the deaths of hundreds of thousands of animals. The Politburo directed all republics and regions of the USSR to conduct three to six trials each involving imaginary conspirators, with the aim of warning the "broad peasant masses" about supposed but nonexistent sabotage activities" [4, p.708-709].

Local authors who have examined life under Soviet rule write that: "The totalitarian past may have achieved its most diabolical experiments on members of society. Alternatively, those who resisted were exterminated, exiled, or sentenced. To enable the implementation of communist doctrine, society was subjected to processes of stigmatization, division, and the collectivization of both private and personal spheres of life. First, private property, which formed part of individuals' sense of identity, was eliminated, and collective ownership was introduced to serve the interests of the ruling elite. Expropriation was conducted so ferociously that fear of losing private property, including land, turned into a genuine social illness, even affecting children.

Second, an equality of hidden poverty and inequality before the law among citizens. This effectively signified the marginalization of labor as the only criterion of prosperity and its replacement with loyalty and unconditional obedience to doctrinal power. Thus, the brainwashing of the majority of society was achieved and transmitted from one generation to the next, forming a mass mentality. A kind of mentality previously unknown in human societies, defined by the level of alienation of its members, through which the leadership took revenge on those who opposed the established regime" [5. p.207].

Evidently, members of the party and representatives of the Soviet authorities were supplied with food and comfortable housing. It is hardly accidental that the Soviet criminologist N. Struckv refers to Karl Marx when discussing the factors that influence deviant behavior during famine: "Hunger is hunger", wrote K. Marx, "but the hunger that is appeased with boiled meat eaten with a knife and fork differs from the hunger in which meat is consumed raw, with the hands, nails, and teeth" [6, p.17]. This statement by Karl Marx was deliberately misused by the Stalinist regime, which, drawing on its own experience, repeatedly engineered famine. The Bolshevik leaders realized that the shortest path to shaping human behavior and enforcing loyalty to the regime lay in the use of starvation as a weapon of torture.

During the famine of 1946–1947, the Soviet regime subjected the population to extreme conditions, at times resulting in the consumption of animal carcasses and instances of cannibalism. Reflecting on the impact of the artificially created famine brought about by Soviet power, the author V. Tchalikidze notes that in 1922: "In the Volga region, where famine was devastating the area, criminal groups specializing in cannibalism were operating, composed solely of minors" [7, p.175].

The same author highlights that the Soviet leader: "N. Khrushchev confirmed that, during the 1946–1947 famine, cases of cannibalism were reported in the territory of Ukraine" [7, p.176]. It should be noted that N. Khrushchev was part of the Stalinist regime, which is responsible for artificially causing the famine in the Moldavian Soviet Socialist Republic.

Evidently, the Soviet power also enlisted local activists to take agricultural produce from the population, stripping them of the means to survive. Eyewitness Valentin D. Buts, born in 1931 and a native of the village of Ferapontievca, provides the following testimony: "...At that time, illiterate people were in power, but they were devoted to the Communists. We would say it differently: at that time, the Soviet regime needed obedient people who

would listen and carry out orders, but who showed no concern for the people. It is widely known that none of the local residents respected the chairman of the village soviet, as he lacked the ability to work for the people and was only inclined to report villagers to the militia authorities for punishment. Many diligent and responsible people suffered at that time without having done anything wrong" [8, p.82].

Many residents were expropriated by the Soviet authorities on the grounds that their households had prospered during the period of Romanian administration. Describing her own life, a resident of Avdarma village stated: "Evdochia Chiril Tumba, born in 1936, stated the following: "In 1944, the Soviet authorities mobilized my father, Chiril Vasilievici Tumba... My mother remained at home with six children... In the winter of 1947, our family had fallen into a catastrophic situation. My mother could barely manage to feed six children. At the same time, our aunt was living together with us, along with her six children. In 1946, the Soviet authorities arrested her husband and sentenced him to prison simply for being a "kulak" ... Here should be added that the local authorities excluded us from the list for food provision at the "canteen," and as a result our family of 12 children experienced severe hardship during the famine. The Soviet authorities treated our family in this way, on the grounds that we had enjoyed a better life under Romanian administration" [8, p.120-121].

It is well known that the Kremlin leadership in the post-war period initiated an anti-Romanian campaign in the Moldavian Soviet Socialist Republic. According to the author Iurie Larii: "The incitement of national hostilities by many politicians of the former USSR, through political appeals and slogans pushed to absurdity, became a cause of numerous serious crimes, including mass murder, violence, terrorism, and the forcible occupation of foreign territories, and also affected overall criminality, considerably aggravating its situation. Under such conditions, the social life of the population becomes unbearable, and as a consequence, these situations generate not only various criminal and delinquent behaviors, but also mistrust, social tension, fear, and psychological stress among the population" [2, p.122].

Local activists in the Moldavian Soviet Socialist Republic also caused serious problems for the native population, denouncing fellow villagers not out of political beliefs, but in order to receive rewards from the Soviet authorities for their servility. The author Vasile Balan reports on the presence of such individuals during that time in his native village of Cărpești: "The famine of 1946–1947 claimed several times more lives in Cărpești than the war. The attics of the houses and the barns were entirely empty. They were cleared out by the members of the village soviet together with the "agricultural plenipotentiary. When has it ever been seen to collect "supply" during drought? People were deprived of their last piece of bread and their last chance of survival. Were the district and republican authorities not aware of what was happening?

Obviously not. The barns and attics continued to be emptied, which doomed many locals in Cărpești to starvation. The leadership of the union, republic, district, and village, devoted entirely to Bolshevism, likely deliberately organized the famine, believing that starving peasants would join the collective farms. The village soviet is also responsible, particularly the activists S. Bâzu and E. Chiosa, who denounced fellow villagers who attempted to conceal the little they still possessed... Those who refused to deliver the "supply" were beaten, imprisoned by the NKVD, mistreated, tried, and deported as "enemies of the people." ...Hunger and disease left devastation in almost every home. In some households, everyone died. In spring, people consumed reedmace, coltsfoot, knotweed, amaranth, dock, nettles, oak acorns, and grape pomace, or even boiled their own leather footwear. There were no longer any cattle or poultry left in the village. In some cases,

people resorted to eating crows, cats, and dogs. There was also a case of cannibalism..." [9, p.65].

As previously mentioned, children became particularly easy victims of cannibals. Some of those who survived still recall with strong emotion the experiences they endured: "Dmitrii I. Savastin (born 1942) provides the following account: ... The Communist authorities confiscated nearly all of our assets. Due to an acquaintance of my father employed by the village soviet, our family was allowed to retain a cow and a small quantity of grain, which ultimately ensured our survival. I will never forget that during the famine my mother was compelled, perhaps fortunately for our family, to work in the household of a Russian military officer. She spent the whole day cleaning, washing clothes, and performing other household duties for just one loaf of bread. We, the children, waited for her anxiously at home. Every time, she shared the bread only with us children, hardly eating anything herself.

I frequently recall a disturbing incident. In the spring of 1947, my sisters and I went into the fields in search of edible herbs. Suddenly, a man appeared ahead of us and began running toward us with a frightening expression on his face. In fear, we ran away, running beyond our strength to escape him. He was likely one of the cannibals chasing down his prey. At that time, many people found themselves in such a condition. We express gratitude to God for preserving our lives" [8, p.95].

According to Ivan P. Crușca, there is another case involving his elder sister: "My father, Porfirii Ivanovici, was mobilized for work in the city of Perm in 1945. My mother, Parascovia Pavlovna, remained at home with my sister. When the collective farm was formed in our village, my mother, like other villagers, was sent to work in the fields. Under those conditions, she was forced to leave Domnica at home together with her cousin Lena. On each occasion, she instructed them to lock the door and not to open it to anyone. At that time, people said there was a cannibal in our village who was kidnapping children, cut them up, and fed on their flesh. This individual was constantly seeking out houses where children were left alone. On one day in 1947, he came and knocked on the door of our house, where my sisters were. He spoke to them very softly, telling them to open the door because he had brought bread. Cousin Lena, affected by hunger, accepted his words and moved to open the door, while Domnica strongly refused, invoking their mother's warnings. She was compelled to intervene and stop Lena by force. The situation suddenly changed when that human-faced animal began forcing the door of the house. Fortunately for the sisters, a neighbor, an elderly woman named Calina, observed the situation, raised the alarm by shouting, and the offender left. Following that incident, the mother ceased leaving the children at home and instead brought them with her to the fields where she worked" [8, p.61].

In many cases, the children did not manage to escape. The existence of criminals practicing cannibalism has been noted by several authors. Based on the information published by them, certain characteristics of the psychological profile of these inhuman individuals can be identified. Studying the development of events in the village of Mingir, Hîncești district, the author Iacob Lupanciuc writes: "As in many places across the republic, numerous cases of cannibalism were recorded, and Mingir was not spared from this scourge.

... In the village lived two sisters with the surname Condrovschii, and in the same neighborhood lived Maria Sărățanu with her 10-year-old son. During the winter of 1946–1947, after heavy snowfall and with the neighborhood situated on a gentle slope, Maria's child was sledding along the street. At a certain moment, the child disappeared together with the sled. Seeing this, his mother began to search for him in a hurry, but without any success. Following the investigation of several traces and signs, suspicion fell upon

the Condrovschii sisters. Quickly calling on her neighbors, the poor woman, with their help, rushed into the yard of those sisters, where, in a mound of snow by the corner of their house, found the child, but already chopped into pieces to be put in the pot soon. The child's clothes, along with the sled, were found in their house, under a little bed. The Condrovschii sisters were arrested, after which there was no further information about them" [10, p.220-221].

By correlating this information with archival sources, it was found that: "On January 20, 1947, the residents of the village of Mingir, Magurcean Nina Antonovna, born in 1917, and Grunovschi Axenia Antonovna, born in 1925, following a prior agreement, kidnapped the 9-year-old boy Târsină Denis, brought him to their home, where they cut him up and ate the meat. Both of them were arrested" [11].

In the same study, the author Iacob Lupanciuc writes: "Another case of cannibalism, even more extreme, was identified in the case of Andrei Sârbu. At his residence, according to the testimony of several residents of Mingir village, 14 human heads were found. Mihai Bordei, a 14-year-old boy at the time, recalls once encountering this Sârbu, together with Anton Morărașu, carrying a large dog on his back, with its tail dragging along the ground. Stopping in his tracks, this cannibal told the boy to come to his house, saying he would give him food, as he had plenty. Observing with attention and suspicion what he had just witnessed, with that dog on his back and the way he was being sized up, the poor boy ran away and only stopped once he reached home, out of breath" [10, p.221].

Unfortunately, not all children were able to identify the risks associated with exposure to strangers. There were cases when they were taken by women who managed to manipulate them into following them. As a rule, they used the promise of food as a lure. In his work, Iacob Lupanciuc describes a case in which individuals succeeded in saving an abducted child: "Tudor Bordei's wife, Panaghia, later married to Efim Scutelnicu and now over 80 years old, herself testified that her 5-year-old child Sava was abducted by Zinovia Sârbu, the mother of that cannibal. Fortunately, the child was rescued by Trocin Păcală, the husband of Maria Enechescu" [10, p.221].

In one of the strictly secret notes sent to Covali, Secretary of the CC of the CP(b) of the Moldavian Socialist Soviet Republic, by the Deputy Minister of Internal Affairs of the Moldavian Soviet Socialist Republic, Major General Orlov, the following information is included: "The Internal Affairs Department of Bujor district reported that in the village of Mingir, within the same district, the locals Andrei Gavril Sârbu (b. 1920) and his wife Zinaida Ilie Sârbu (b. 1923) are suspected of practicing cannibalism. Human bones and two skulls were uncovered in the basement during searches carried out at their residence. The investigation revealed that toward the end of February, the Sârbu spouses lured an unidentified woman into their home and killed her. The same method was used by both to kill an unknown man on March 10. They used the bodies of the murdered individuals for food... both have been arrested and will be held criminally liable" [11].

Orphans and children abandoned by their families as a result of the famine frequently became the victims. Recalling the events of that period, citizen Cîrlig (Topal) Livia P., born in 1928, stated the following: "Once, in the city of Bender, I witnessed a mother abandon both her children in the marketplace, after which she boarded a train and left. The little boy and girl were taken in by the militia and were probably placed in an orphanage. We cannot bring ourselves to condemn that woman for the act she committed. She undoubtedly realized that at home her children might perish from starvation, while in a children's institution they could survive" [8, p.72].

Due to the large number of children lacking care, Soviet authorities opened a wide network of orphanages. The media of that time published materials in which the situation

of children in these institutions was shown in a favorable light. A relevant example is the article below: "At the children's home in Chițcani village, Bender district, there is a lot of bustles as the rooms in the four new sections are being whitewashed. The boys are setting up tables, chairs, and beds, whereas the girls are sewing the curtains. The orphanage is getting ready to take in another 100 pupils. The director of the institution, Comrade Hodorovskii, assisted by the Komsomol members Turculeț, Filipovici, Baran, and others, is making every effort to ensure comfort and a warm, homelike atmosphere for the newly arrived pupils. Warm clothes, bedding, and hot food three times a day have already been prepared for them" [12, p.3].

In reality, a large number of children in orphanages perished from starvation. The resident of Cioc-Maidan village, citizen Plucci Petr Mihail, born in 1923, testifies that: "an orphanage was opened in the locality. Orphans from the village and surrounding areas were brought together. Each child received 300 grams of bread daily and was provided with three meals a day. Classes were held in the village school building. During the period of famine, two children lost their lives" [8, p.234].

Details concerning the real condition of children in orphanages can be found in archival materials. One of the highly classified notes reports that: "Eight children in terminal condition due to starvation were identified in the children's home in Vorniceni and were hospitalized. It was found that the children's home had not received 80 kg of fats in January, and the children's feeding was carried out in breach of the established norms" [11, page 53].

Frequently, children escaped from these institutions in search of something to eat. Thus: "On 24 March, the Răspopeni District Internal Affairs Division was informed of the disappearance of pupil Maximov from the Oleșcani Children's Home No.1". Following the measures taken, it was established that the resident of the village of Oleșcani, Barbos Elena, born in 1910, previously convicted by the Romanian authorities for theft, and her son Barbos Vasilii Nicolaevici, lured the minor Maximov, born in 1932, into their house, whom they killed by hitting him with an axe. They ate his flesh. During the search of their residence, the garments of pupil Maximov were identified. Both criminals were taken into custody" [11, page 175].

Soviet history manuals glorified the communist regime for the results obtained during 1946–1947. The writers of these materials deliberately avoided reflecting the reality of the horrors endured by the local population during the famine. Information of this kind was reported to the leadership only in strictly secret documents, while the population, even more than five years after the catastrophe, was informed in crude language using Cyrillic letters about the following "achievements" of the Soviet authorities at the time: "It significantly upgraded the material infrastructure of pedagogical establishments, which in turn improved the quality of teacher preparation... In 1946, the 8th Plenum of the Central Committee of the Communist Party (Bolsheviks) of Moldova debated the issue 'Regarding the preparation of the republic's schools for the 1946–1947 academic year,' the first year of the post-war Stalin Five-Year Plan" [13, p.230-231].

It should be noted that the repressive regime used properties taken from the so-called kulaks to establish orphanages and schools. The feeding of pupils and teachers was based on agricultural produce forcibly requisitioned from the population. Soviet propaganda, of course, declared that the local inhabitants were voluntarily supporting the Soviet state: "The population of the republic actively engaged in the construction and repair of schools and classroom facilities, in ensuring fuel supply for schools, and in creating funds for universal education, as well as in setting up boarding schools and hot morning meals" [13, p.231].

Researching archival materials, we find that due to the famine in the region during the reference period, criminal groups specialized in kidnapping children, killing them, consuming and trading human flesh as well as products prepared from human flesh were formed. The leadership of the Moldavian Soviet Socialist Republic was notified of the existence of such groups by the Deputy Minister of Internal Affairs, Major General Orlov, who reported that: "On March 14, 1947, information was received that citizen Borșci Agripina Ivanovna, born in 1912, and her brother Nicu Alexei Ivanovici, born in 1910, who live in the suburb of Chișinău, on Sfânta Vinere Street, in the Schinoasa village soviet, having no means of subsistence, consume human flesh daily and sell such flesh. During the investigations, it was found that Borșci and Nicu kill people and consume their meat, and sell some of it to the population... Both suspects were detained" [11, page 167].

There were criminal groups that, after killing their victims, distributed the human flesh for consumption among the group members: "residents of Vădeni village, Soroca district, including Iavorschii N.F., Iavorschaia A.P., Iavorschii F.F., Gulii M.P., Gulii A.I., and Gulii I.A. On March 26, they killed citizen Andries A.F. and consumed his flesh. On April 3 of this year, they kidnapped and killed a 13-year-old boy, Graur Matvei Feodorovici, whose body was dismembered and divided among the group members to be consumed. All of them were arrested and held criminally liable" [11, page 180]. The same note reports that: "Residents of the village of Vantseva, Soroca district, Renitchii Ivan Vasilievich, born in 1926, and Renitchaia Evdochia Ivanovna, born in 1907, both poor peasants, on April 7 kidnapped and killed a little boy from the same village, Mucomol Grigorii Semenovich, 12 years old, they divided the meat between them and partially consumed it. The two offenders were arrested" [11, page 180].

A case of kidnapping and murder of a minor was discovered even by the meat collection officers. The information note sent to the Moldavian Soviet Socialist Republic leadership states the following: "On March 19 of the current year, the resident of the village of Unguri, Otaci district, Soroca county, Casico Semen Ivanovici, born in 1896, killed an unknown minor aged 16-17, a beggar who entered his house to ask for something to eat. The body was hidden in the attic of the house to later consume it as food. While the offender was cleaning bloodstains in the yard, he was spotted by the meat procurement officials Zabolotnîi and Boico, who came in the exercise of their duties. The offender was arrested" [11, page 175].

It is evident that even during the famine, activists and authorized collectors of food from the population continued their operations. As we mentioned before, we cannot rule out the fact that some criminals also supplied these proxies with human flesh, in order to meet the quotas, set by the Soviet authorities.

Meanwhile, thousands of people were dying from malnutrition-related dystrophy. Mass graves were prepared for the burial of the numerous bodies in the cemeteries of various settlements. Frequently, even people who were still alive were thrown into these pits. Citizen Anghelov Ivan Vladimir, born in 1935, described the ordeals he experienced, stating that in 1946, at the age of 11 and in a critical condition, he was admitted to the hospital in Avdarma: "During that period, my aunt worked in a temporarily established hospital in the village for people affected by dystrophy, located roughly 200–300 meters from the hospital I was in. In a moment of desperation, I made the decision to visit that hospital. It was an old auxiliary building (a barrack) where people severely ill from famine were admitted. When I opened the door, I saw a horrific scene that I still cannot forget to this day. There were people in that place who were on the brink of death, barely able to move and only attempting to whisper something. Most of them were transported from this place to the cemetery. My days were spent here as well... I became unable to move,

yet hearing the conversations near me made me aware that I was still alive. I didn't want to live anymore. One night I heard: "Take him before his aunt gets back!" But fortunately, as if it were God's will, my aunt arrived at that moment, and the grave diggers left me alone. Later I realized that it wouldn't last long... I don't know: "Who made the decision to bury the people who were still alive in a common grave? Obviously, these living beings were thrown into the mass grave by the grave diggers, who received in return their food ration for that day. I would like to see the records kept by those individuals and the doctors who issued death certificates for persons who were still alive" [8, p.107-108].

I. Anghelov further states: "I was not afraid of dying; nevertheless, deep down I wanted to stay as long as possible with my aunt" Several days passed after that incident, but my situation did not improve in any way. Once again, I heard the same voice: "She went home, hurry and take him!" They put me on a ladder serving as a stretcher, laid the body of a girl on me, and carried us out of the room. While the grave diggers were carrying us toward the cemetery, passing by the church, they came across my aunt Maria and informed her that I had died. I still remember her words: "I want to see him for the last time." Approaching the stretcher, she looked at me and, seeing that I had blinked, right away demanded my return to the hospital. Thus, I was saved from death" [8, p.108].

Similar cases took place in other settlements as well. In this regard, author Vasile Balan states that in the village of Cărpești: "Each day, 3–4 people died and were interred in mass graves. Grigore Mocanu, who worked as a gravedigger in those days, shared the following account about that period. The famine of 1946–1947 covered our village in grief and darkness as well. We buried so many people that I can no longer keep count of them... We did not close the grave completely for a few days, until it was filled. But there were cases when even semi-conscious people were thrown into the common grave. I still cannot forget Anica Znacoveanu, a Gypsy woman we found unconscious in the middle of the road. We laid her in the sleigh along with the others, assuming she had died. When we moved to place her in the grave, she suddenly started groaning. Ilie Argint, who at the time led the village soviet and was accompanying us, told us to throw her into the pit too: "She'll die anyway," he said. "So we buried Anica Znacoveanu alive as well. May I be forgiven for this sin", Mr. Grigore concluded, making the sign of the cross [14, p.65-66].

Naturally, this whole ordeal took place under the cover of **Soviet propaganda articles**, which presented a different version of events. As cases of cannibalism were reported in January 1947 across the Moldavian Soviet Socialist Republic, and activists seized the last remaining food from people, Soviet correspondents wrote: "The collective farm had already prepared the seeds and placed them in granaries. The grains are kept in proper storage conditions and protected against rodents. This refers to seeds of wheat, rye, barley, and corn... Every morning, the collective farm employees move out to the planted fields. They use shovels to cut frozen snow into slabs, stacking them to build ridges that will capture the incoming snow. By this method, 120 hectares had already been processed" [15, p.3].

The article "Let's Protect the Orchards" mentions that: "The young viticulture and orchard workers of the Săseni sovkhoz in Bravicea district take care of orchards and grapevines". Young people from the state farm wrap the trees' trunks with bulrushes and prepare stakes for the vines. Efrosinia and Elena Cemortan are carrying out 180–200% of their daily required output" [16, p.3].

In reality, many of the settlements praised by propagandists in the press were recording high numbers of people affected by dystrophy, along with a rise in crimes typical of the famine period. As previously stated, in most cases cannibals would lure **children with false promises that they would provide them with food. Given their young age, the**

children could not comprehend the adults' cruel intentions.

A strictly confidential note signed by Major Lavrentiev in February 1947, head of the Moldavian Soviet Socialist Republic of the MIA secretariat, states that: "On February 9, 1947, the resident of the village of Taraclia, Căinari district, Stepu Leonid Ivanovici, born in 1912, lured the little boy Guranda, born in 1935, into his house, killed him in order to eat his flesh. He was arrested and taken away... on February 15, 1947, in the village of Cimișlia, Bazatic Maria Savovna, born in 1925, and Bazatic Anna Savovna, born in 1920, lured a 7-year-old girl, Bulat, into their house, killed her, and ate her flesh... The Bazatic sisters were placed under arrest" [11, page 78].

The following note states that: "On February 28, 1947, the inhabitants of the village of Sturzovca, Glodeni district, Balti County, the poor peasants Chilar Anna Stepanovna, Gornan Vasilii Ivanovici and Galușca Zinaida Ivanovna, lured into their house a 10-year-old boy, Crețciuc Mihail Danilovich, whom they cut up and ate his flesh... Everyone involved was arrested and charged with criminal offenses" [11, page 127].

Many children were declared missing during that period, with no further information about them. Following the investigation, some of the remains were found, while other children were never discovered. According to archival records, the following information has been preserved: "On June 8, 1947, an 11-year-old girl from Voroneț village in Chiperceni district, Vorgan Zinaida Feodorovna, disappeared from the family orchard. Her parents notified the village soviet and expressed suspicion that the peasant women Botnar D.A. and Caciuc A.A. from the same village had abducted and killed her. Following investigations carried out by employees of the Internal Affairs Department of the Chiperceni district, it was found that the girl was indeed kidnapped and killed, and her flesh was consumed by the criminals. It was also established that previously, a 15-year-old orphan girl, Russu Vera Timofeevna, was kidnapped and killed by them, whose flesh was consumed by the criminals, who were joined by the resident of the same village, Lopatinschaia A.G. All of them were arrested and brought before criminal justice proceedings" [11, page 191].

On April 26, 1947, information was received by the OAI section of Olănești district regarding the disappearance of two underage sisters, Agafia Joltîri (10) and Tatiana Joltîri (15), from the village of Purcari in Olănești district. Following the measures taken, it was found that both were killed and their meat consumed by the residents of the same village, Danilescu Olga Constantinovna and Murzac Olga Constantinovna. The offenders were prosecuted under criminal law" [11, page 192].

It should be reiterated that in certain cases, offenders could abduct a child simply by promising him a piece of bread. Confirmation of this comes from the following archival records: "On January 26, an unknown 11-year-old girl came to the house of Grigorii Nichitovici Sharov (b. 1928), a poor inhabitant of Volontirovca village, and asked for some bread. Sharov and Sharov's sister Lyudmila Nikitovna, born in 1926, killed her, dismembered her body, and ate the flesh. Both were arrested and taken away" [11, page 78].

Further information on the same case is provided in the following document, which states that: "In the village of Volontirovca, Bender County, in the house of citizen Sharov Grigorii Nichitovici, born in 1920, a dismembered body of an 11-year-old girl was found, part of which was consumed as food. The investigation determined that Sharov and Sharov's sister Lyudmila Vasilievna lured an 11-year-old girl who was passing by their house into their home by promising her bread and killed her. The identity of the minor has not been established to date. Sharov G.N. and Sharova L.V. have been arrested" [11, page 14].

Upon examining the case, it is noted that the victim has not been identified. It is also hard to determine how many such cases took place and how many children are currently

still regarded as missing.

The research materials indicate that children under the age of 10 were more easily victimized by criminals. In a number of cases, the children were abducted by individuals they were acquainted with. Frequently, they were neighbors, as a matter of fact. In the following, we will present a few examples of this type: "On January 24, 1947, the inhabitants of the village of Mileștii Mici, Chișinău district, Chihai Constantin Alexandrovici, born in 1927, a middle-class peasant, and Andronachi Nadejda Andreevna, born in 1930, lured their neighbors' daughter Petrașcu Parascovia Pavlovna, born in 1940, into the house of the Andronachi village, whom they cut up, dismembered, and consumed. Chihai and Andronachi were arrested by the authorities" [11, page 14].

The reports submitted by the Ministry of Internal Affairs of the Moldavian Soviet Socialist Republic mentioned that the main factor that generated the crimes of murder with the subsequent dismemberment of the corpse to consume the meat was the fact that most of the perpetrators did not have food and were deprived of help from the Soviet authorities during the famine. In this regard, we are involuntarily reminded of the statements of the American sociologist Edward A. Ross: "Human groups are often the final result of social processes." [17, p.171].

As previously mentioned, some offenders were suffering from a severe form of dystrophy. A case was reported in early April 1947 to the leadership of the MIA of the Moldavian Soviet Socialist Republic, showing that: "The resident of the village of Ialoveni, Chisinau district, Vasilița Evghenia Petrovna, born in 1917, a peasant, on March 10 kidnapped and cut up an 11-year-old girl, her neighbor Boldurat Feodosia Vasilievna, and consumed her flesh. Vasilița has third-degree dystrophy and has been isolated in a barracks" [11, page 174].

Often, those offenders died shortly after due to the ailments they were suffering from. Thus: "The resident of the village of Sarcova, Rezina district, Orhei county, Lesnic Irina Dmitrievna, born in 1897, on March 27 lured a 5-year-old child who was playing in the road, Morcan Feodor, into the yard of her house, whom she killed by strangulation, dismembered the corpse and partially used it for food. During the investigation at the scene, the other body parts of the murdered boy were found in the attic of the house. A few days following her arrest, Lesnic I.D. died as a result of pneumonia" [11, page 180].

Throughout the reference period, some adults involved children in criminal activities, taking advantage of their precarious situation. One of the strictly secret archival materials states to the Moldavian Soviet Socialist Republic leadership that: "On January 12, 1947, in the village of Avdarma, Comrat district, citizen Iazadji Nadejda, born in 1907, from a kulak family, with the participation of her daughter Elena, born in 1930, kidnapped and cut up a 7-year-old girl, Grec A.S., dismembered her body and ate it. Both of them were apprehended" [11, page 77].

The following top secret note states that: "Citizen Iahodji Nadezhda Ivanovna, born in 1907, and her daughter Iahodji Elena Ivanovna cut a 7-year-old girl, Gref Alexandra Sergheevna... Both women were arrested and recognized their guilt. No food supplies were received from the state by the Iahodji family" [11, page 8].

Another case was reported on May 26, 1947 as follows: "The residents of the village of Alexandresti, Râșcanii district, Derevensachaia D.N., her daughter Derevenschaia P.G. and her son Derevenschii E.G. killed their fellow villager Brenic Leonid Pavlovici, aged 6, and consumed his flesh. The perpetrators are being prosecuted under criminal law" [11, page 192]. This is followed by the statement that: "On June 28, 1947, at 10 p.m., Maria Feodorovna Miron, born in 1892, resident of Scoreni village in Strășeni district, through her daughter Feodosia Davîdovna Miron, aged 13, lured into the house the little boy Boris

Gheorghievici Miron, who lived next door. They cut him up and ate his flesh. During the investigation search, authorities discovered bones and clothing identified as belonging to Miron Boris Gheorghievici. Maria Feodorovna Miron and her daughter Feodosia Davîdovna Miron have been arrested" [11, page 197].

As previously noted, the Soviet authorities made no efforts to assist the population in overcoming these difficulties. On a formal level, meetings were organized and widely reported in the Soviet press. On the pages of "Molodiozh Moldavii," a concise report was published from a meeting dedicated to the fight against drought, stating that: "The gathering was attended by scientists, agricultural specialists, kolkhoz members, and peasants. Comrade Kashnikov, Secretary of the CC of the CP(B) of Moldova, addressed the audience from the tribune on "Measures to combat drought and develop water management in Moldova".

Based on the presentation, participants began active discussions. Professors Dorofeef and Kovarsckii of the Chișinău Agricultural Institute gave significant attention to the proposal on selecting drought-resistant agricultural crops. Other speakers highlighted the role of shelterbelts in agriculture. Comrade Golic, representative of the Central Committee of the CP(B) of Moldova, noted that in many districts insufficient attention is paid to irrigation system development and that the use of drought-resistant crops is progressing very slowly. He also spoke about the need to ensure greater snow retention in the fields and to use water from melting snow to achieve a rich harvest. For outstanding performance in the development of water management in Ceadîr-Lunga, the district received the Red Banner of the CC of the CP(B) of Moldova and the Council of Ministers of the Moldavian Soviet Socialist Republic. The meeting participants signed an address to all peasants and collective farmers of the republic, urging them to combat drought and develop water management. With great enthusiasm, the participants signed a greeting addressed to the leader of the people, Comrade Stalin" [18, p.3].

In reality, propagandists together with party leaders sharpened their skills in deception. They published lies in books and newspapers without remorse, while the population was facing a particularly serious situation. To confirm this, we present an excerpt from a top-secret report dispatched in February 1947 to the political leadership of the Moldavian Soviet Socialist Republic on combating dystrophy in Sângera, Chișinău district, stating that: "... For 99 patients with third-degree dystrophy, 25 beds are available in the Sângera hospital and 20 beds in a barrack opened close to the hospital. The facilities are severely overcrowded. Each bed is shared by three to four patients, who remain in their own clothing. There is no bedding or mattresses in either the hospital facility or the barrack. The hospital and the barrack are attended by one doctor, one feldsher, two nurses, nine orderlies, as well as five auxiliary workers. Conditions in both the hospital and the barrack are appalling because there is no firewood for heating. The responsibility is attributed to the chairman of the village soviet, Andrei Afanasievici Cazacu, the secretary Dmitrii Andreevici Brânzâlă, and the hospital doctor, Comrade Voroncihin. The disinfection chamber and bath are functioning poorly and with great difficulty. As a consequence, a large number of patients are infected with pediculosis ... During January and February 1947, 76 deaths were recorded in the locality, including 54 among hospitalized patients. Significant problems are caused by the lack of support from district party secretary Platov and executive chairman Grigorenco to institutions fighting dystrophy.

The situation worsened due to the negligence shown by the chairman of the village soviet and its secretary, who were to have delivered 35 m^3 of firewood from the Bender forestry enterprise already in July. Currently, they are going through people's yards looking for firewood to ensure heating for the hospital and barrack and to support the

food supply point" [11, pages 42-43]. A further note indicates that: "On 10 February 1947, 46,343 people affected by dystrophy were identified in Chișinău county, including 17,775 children... Only 5,342 patients from the total are under hospital treatment" [11, page 59].

From the evidence presented, it is clear that both local and central (Kremlin) authorities viewed with indifference the statistics showing daily deaths of thousands of people. In psychological terms, they did not differ from the Russian criminal Vasili Komaroff, who at the start of the 20th century killed and dismembered more than 33 people for material interest. During the investigation, he declared that: "he does not think humans are more important than caterpillars" [19, p.275].

It is obvious that this same mentality was present among the officials of the communist totalitarian regime reestablished in Bessarabia beginning in the summer of 1944. Some eyewitnesses insist that even the fascists in the war years did not behave in this manner. A resident of the village of Avdarma, Tumba Evdochia, testified that not all German soldiers were bad people: "During the summer of 1944, the German troops were withdrawing. One German soldier received orders to burn down the munitions warehouse in the middle of the village. Before setting the depot on fire, he went to an old woman's house and asked her to notify all the residents of Avdarma to flee the village. The elderly woman pleaded with him not to burn the depot down, but he explained that he would be executed if he disobeyed the order. Due to this German serviceman, many locals saved themselves by evacuating their homes in haste. As a result of the explosion, fragments flew in all directions. Unfortunately, the German soldier did not succeed in fleeing the area and was seized and executed by the Russians" [8, p.119-120].

It should also be emphasized that both Party members and activists targeted locals who claimed they had enjoyed better living conditions under Romanian administration. As a countermeasure, public trials were organized for war criminals, where both Germans and Romanians were brought before the court. Selected excerpts from the records of these proceedings appeared in the press. The Soviet authorities aimed to convince the population that they were living significantly better under Soviet governance. One of the articles published states that a person called "Kuharev", who had been employed as a medical worker during the occupation, said that... A significant number of people died from infectious diseases in the village of Trușeni in July 1944: "Each dwelling sheltered 5–6 families; on visiting these houses, I had to evacuate 4–5 bodies of people who had died from exanthematous typhus... Throughout a 14-day period, more than 1,000 people in Trușeni died because of typhus" [20, p.6].

Obviously, no one disputed the fact that during the military operations there were cases of infection and death among locals due to infectious diseases; however, the situation during the 1946–1947 famine proved to be much more severe. In a report submitted to the Moldavian Soviet Socialist Republic leadership at the end of February 1947 by Lieutenant General Tutușkin, it is noted that: "There was a continuous rise in the number of dystrophy cases in Chișinău County by February 20, 1947... On February 10, there were a total of 46,343 people in the county, and by February 20 the number had reached 48,173... Over the course of 20 February days, 1,398 deaths were recorded..." [11, page 51].

Chișinău County included the locality of Trușeni as well, to which the witness referred during the trial of war criminals. Unfortunately, during the famine artificially caused by the Soviet authorities, cases of cannibalism were also recorded in this village. Children were also among the people who fell victim. One of the briefing notes indicates that: "The residents of the village of Trușeni, Chișinău District, Nicolai Anna, Grebencea Alexandra and Grebencea Maria, on June 20, 1947, cut up the 7-year-old orphan girl Boța Maria and ate her flesh. The criminals were subjected to criminal prosecution" [11, page 194].

This reality was typically masked by articles encouraging people to engage more actively in building socialism, arguing that: "All labor teams in Moldova enthusiastically support the initiative of the workers of Leningrad and undertake to work determinedly to accomplish the set five-year plan within four years" [21, p.1].

It is well known that the Gagauz population suffered greatly during the 1946–1947 famine; however, the press at the time described it differently. This is confirmed by an article published in late December 1947 by Soviet correspondent D. Shchukin, in which it is written that the Gagauz were content with their situation and that, for the "first time," they were able to choose their local authorities via "free elections": "...The lights in the village of Carbalia burned throughout the entire night. The majority of the inhabitants of this village are Gagauz. Throughout the year, these people experienced many significant events. That fall, shortly before sowing the fields, the "Andreev" collective farm was formed. The people joined forces during sowing and succeeded in completing the work very rapidly. Subsequently, the fields became covered in snow, which guaranteed the kolkhoz workers a good yield.

At present, the Gagauz are, for the first time, freely electing their representatives to the local Soviets. Among the candidates are fellow villagers — Gagauz people: Iusumbeli G.V., Caraiami D.S., Dermendji D.V. In the fraternal Soviet family of peoples, all laboring people, regardless of ethnic origin, have equal rights to employment and happiness" [22, p.2].

Publications describing the "happiness" of Soviet peoples continued even as the Gagauz, along with other local residents, were violently loaded into cattle wagons in 1949 and deported to Kazakhstan and Siberia, where countless people died under inhuman and degrading conditions.

It is disappointing that even nowadays some writers misrepresent historical truth in their publications. Soviet and post-Soviet historiography attempted to present the economic difficulties solely as a consequence of natural causes, downplaying the impact of political decisions and repressive policies on the aggravation of the 1946–1947 famine crisis. Thus, a number of Russian authors sought, with extraordinary cynicism, to attribute the responsibility for the 1946–1947 famine in the Moldavian Soviet Socialist Republic to the Romanian authorities.

These historical revisionists state that: "As a result of the drought, a dreadful famine occurred in Moldova during 1946–1947. The Romanians are also held responsible, as during their retreat under the advance of the Soviet army, they took away all the seed supplies. Consequently, there was not enough bread for the people, and they were living at the edge of existence. Food aid was sent from Moscow to support the local population, and public kitchens were organized, although this was still insufficient" [23, p.10-11].

Archival materials that have been declassified demonstrate the contrary. According to reports from the force structures, it becomes clear that: "Starting in the summer of 1944, the Moldavian Soviet Socialist Republic was crossed by trains carrying grain, food products, medicines, timber, and other goods, traveling from Romania to Soviet Russia. During the 1946 famine, the Moldavian Soviet Socialist Republic railway made trains available to the Soviet authorities for transporting bread from Romania to the USSR. In a strictly classified report dated 5 January 1947, sent to the Minister of Internal Affairs, Lieutenant General Tutușkin, by Major Kornienko, head of the special transport section of the Chișinău railways, it was stated that: "...In accordance with a directive from the Ministry of Transport, in December 1946 we were required to supply wagons for the transport of bread from Romania to the USSR, as well as for returning demobilized Soviet Army personnel to the country...". A further note designated as strictly secret contains the main

tasks established for the Special Transport Section of the Railways in Chișinău for 1946: "To ensure the delivery of bread and other freight from Romania in accordance with the schedules set out in interstate accords". These data indicate that a significant share of Romanian grain, beginning in 1944, was transported via the Moldavian Soviet Socialist Republic to Soviet Russia, including during 1946–1947, when hundreds of thousands of Bessarabians starved due to the fact that, in the period of drought, the Soviet authorities confiscated their last food supplies, leaving them without any means of survival. It is misleading to state that Moscow did everything possible to prevent famine in the Moldavian Soviet Socialist Republic, when in fact it had unleashed a full-scale struggle against the Bessarabians to eliminate any attempt at resistance to the occupiers" [23, p.11].

In order to protect the younger generation of his native village from the danger of historical distortion and from the tendency of some nostalgic feelings to revive the Soviet Empire, Vasile Balan finishes the chapter of his book devoted to the famine with the following lines: "I have enumerated all of this so that future generations may know the anguish experienced by the famine-stricken people of Cărpești. It should be made clear that responsibility for all these disasters falls on the Kremlin leadership, the Moldavian Soviet Socialist Republic leadership of that period led by former First Secretary of the C.C. of the C.P.(b) of Moldova N.G. Coval and the Chairman of the Council of Ministers of the Moldavian Soviet Socialist Republic, together with the party and district authorities of Baimaclia, and especially Ilie Argint, former chairman of the Cărpești village council... Innocent victims of the 1946 famine and of the Soviet occupation regime! They deserve at least some kind of cross raised in their honor!!! Everlasting memory to them!!!" [9, p.66].

Conclusions. The 1946–1947 famine in the Moldavian Soviet Socialist Republic was largely intentional and coordinated. It cannot be considered exclusively a natural phenomenon, but must be analyzed in connection with political choices and their long-term effects on human lives. The traumatic experiences endured by the population shaped the attitudes and mindset of future generations, demonstrating that the 1946–1947 famine left enduring marks on society through the emergence of behaviors, survival mechanisms, and resistance patterns that are still reflected in collective memory today.

This message is addressed not only to younger generations, but also to adults who lived under Soviet censorship and restricted access to information. It is widely accepted that the post-Soviet society still faced a shortage of reliable sources documenting the calvary endured by our fellow citizens during the famine of 1946–1947. Officials of the totalitarian communist regime suppressed information indicating that this humanitarian catastrophe had been intentionally engineered in the Moldavian Soviet Socialist Republic and used as a repressive tool against the indigenous population. Evidently, the famine, compounded by the discriminatory restrictions imposed by the Soviet nomenklatura, forced the population to endure severely degrading living conditions. The ongoing crisis among the population caused disturbances in behavior in many local residents, which in turn led to the commission of serious and particularly serious crimes. A number of individuals were detained on charges of cannibalism. Under these circumstances, the authorities did not take steps to prevent this kind of crime, effectively leaving the population on its own, without ensuring safety or safeguarding lives. Simultaneously, no measures were undertaken to prevent the abduction of children, offenses that had escalated during the famine. In this regard, the article serves as a means of restoring historical memory and disseminating information about the genocide attributed to the communist totalitarian regime against the local population through the artificial induction of the 1946–1947 famine in the Moldavian Soviet Socialist Republic, which resulted in the deaths of hundreds of thousands of people, a fact that remains indisputable.

Bibliographical references

1. Ghimpu Gheorghe. Aspects of Communist Genocide in the Moldavian Soviet Socialist Republic. In: The Impact of the Totalitarian Past on the New Democracies of Central and Eastern Europe (International Symposium), Chișinău, 1–2 July 1999.
2. Larii Iurie. Criminology. Chișinău, 2020.
3. Candace Fleming. The Romanovs: Murder, Revolution, and the Fall of Imperial Russia. Translated from English by Gabriel Tudor. Bucharest: ART Publishing House, 2022.
4. Andrew Christopher. The Secret World: A History of Intelligence Services. English translation and notes by Viorela-Valentina Dima (coordinator), Denise Dona, Raluca-Elena Hurduzeu, Olivia-Cristina Rusu. Bucharest: Trei Publishing House, 2022.
5. Pascaru Ana. The Totalitarian Past Viewed Through the Lens of the Present and Future. In: Proceedings of the International Symposium "The Impact of the Totalitarian Past on the New Democracies of Central and Eastern Europe", Chișinău, 1–2 July 1999.
6. Struchkov N.A. The Problem of the Criminal Personality. Leningrad, 1983.
7. Chalidze V. Criminal Russia. Moscow: Terra, 1990.
8. Kurdoglo Konstantin. Famine in Gagauzia (1946–1947). Comrat–Chișinău, 2010.
9. Balan Vasile. Eternal Memory of the Homeland. Cărpești–Chișinău, 2004.
10. Lupanciuc Iacob. Mingir Commune. Pages of History. Chișinău, 2004.
11. MIA Archive of the Republic of Moldova, Collection 103, Inventory 5, Item 58, File No.23, Vol. 1.
12. Nikolchev E. Native Home. Children Will Live Well Here. Youth of Moldova, January 14, 1947.
13. Andrus O.G. Sketches on the History of Schools in Bessarabia and the Moldavian Soviet Socialist Republic during the First Half of the Twentieth Century. Chișinău: Soviet School Publishing House, 1952.
14. Peskov P. The Seeds Have Been Stored. Kaganovich Collective Farm, Dubăsari District. Youth of Moldova, January 14, 1947.
15. Timuș. Preserving the Orchards. Youth of Moldova, January 14, 1947.
16. Coandă Lisette, Curta Florin. A Brief Dictionary of Sociology. Bucharest: ALL Publishing House, 1993.
17. Youth of Moldova, January 17, 1947, No. 6 (228).
18. Simpson Paul. The Serial Killers Files. Translated by Andreea-Marin Vrabie. Niculescu Publishing House, Bucharest, 2019.
19. Soviet Moldova, December 7, 1947, No. 239 (1049).
20. Soviet Moldova, November 22, 1947, No.229 (1039).
21. Shchukin D. For a Happy Present, for a Better Future! Soviet Moldova, December 23, 1947.
22. Simion Carp, Ruslan Condrat. Investigation of Communist Crimes: Negligence of Duty, Failure to Assist, and Other Crimes Committed by Moldavian Soviet Socialist Republic Authorities during the Natural Disasters of Summer 1948. Chișinău, 2025.

CZU: 351.78:004.056 **DOI: https://doi.org/10.5281/zenodo.20844907**

CYBERSECURITY – COMPONENT OF NATIONAL SECURITY

Aurelian-Gabriel BĂDIȚĂ,
PhD, University Lecturer,
Border Police Department,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0004-8987-3357

Abstract

This article analyzes cybersecurity as a fundamental pillar of Romania's national security, in the context of recognizing the cyberspace as a strategic operational domain. The article explores the evolution of the concept of the security, from the protection of physical borders to digital sovereignty, grounded in the confidentiality-integrity-availability (CIA) triad. The current strategic and legislative framework is evaluated, with a particular focus on Law No. 58/2023 and the new requirements introduced by the NIS 2 Directive, highlighting the shift towards direct managerial responsibility and the obligation to report incidents within critical timeframes (24/72 hours).

The research is based on a qualitative methodology, including doctrinal analysis, case studies, and legislative assessment, to provide a overview of the security architecture. The paper details the national institutional architecture (DNSC, Cyberint, DCCO, MApN), providind practical examples of intervention and emphasizing the importance of regional cooperation with the Republic of Moldova through Table Top exercises (TTX).

The conclusions highlight the urgent need to transition from purely reactive to proactive management, an essential step in ensuring the resilience of critical infrastructures against contemporary hybrid threats, where the human factor remains a critical component.

Keywords: cybersecurity, critical infrastructures, NIS 2 Directive, digital resilience, hybrid threats, strategic management.

SECURITATEA CIBERNETICĂ – COMPONENTĂ A SECURITĂȚII NAȚIONALE

Abstract

Prezentul articol analizează securitatea cibernetică drept pilon fundamental al securității naționale a României, în contextul recunoașterii spațiului virtual ca domeniu operațional strategic. Articolul explorează evoluția conceptului de securitate, de la protecția frontierelor fizice la suveranitatea digitală, fundamentată pe triada confidențialitate-integritate-disponibilitate (CIA). Este evaluat cadrul strategic și legislativ actual, cu un accent deosebit pe Legea nr. 58/2023 și noile rigori introduse prin Directiva NIS 2, evidențiind trecerea către responsabilitatea managerială directă și obligația notificării incidentelor în termene critice (24/72 ore).

Cercetarea se bazează pe o metodologie calitativă, incluzând analiza doctrinară, studiul de caz și evaluarea legislativă, pentru a oferi o imagine de ansamblu asupra arhitecturii de securitate. Lucrarea detaliază arhitectura instituțională națională (DNSC, Cyberint, DCCO, MApN), oferind exemple practice de intervenție și subliniind importanța cooperării regionale cu Republica Moldova prin exerciții de tip Table Top (TTX).

Concluziile evidențiază necesitatea stringentă a tranziției de la un management pur reactiv la unul proactiv, etapă esențială pentru asigurarea rezilienței infrastructurilor critice în fața amenințărilor hibride contemporane, unde factorul uman rămâne o componentă critică.

Cuvinte-cheie: securitate cibernetică, infrastructuri critice, Directiva NIS 2, reziliență digitală, amenințări hibride, management strategic.

Introduction. Accelerated technological progress in recent decades has redefined the foundations of national security, shifting the focus from the exclusive control of physical borders to the protection of digital sovereignty.

If in past centuries a state's security was intrinsically linked to geographical barriers (mountains, rivers), in the 21st century, the integrity of cyberspace has become a prerequisite for institutional survival.

The official recognition of cyberspace as an operational domain (alongside the air, land, and maritime domains) marks a paradigm shift in defense and public order doctrine [1].

Contrary to traditional domains, cyberspace exhibits three ontological characteristics that contribute to its complexity:

– *Artificial character*, as it is a man-made infrastructure that is constantly expanding and transforming;

– *Asymmetry*, which is represented by the disproportionate ratio between an attacker's limited resources and their ability to cause strategic damage (e.g., paralyzing a state's financial or payment systems);

– *Atemporality and extraterritoriality*, which are represented by attacks that occur at the speed of light, ignoring national borders and traditional legal jurisdictions.

For example, in modern conflict, before the first ground units cross a border, cyberattacks are launched against communications networks and radar systems to "blind" the enemy's defenses.

Cybersecurity is not a product, but a state of normality maintained through technical measures (firewalls, encryption) and organizational measures (access policies, staff training).

The efficacy of advanced technical systems depends on users' level of cybersecurity literacy, as the human factor remains the primary vulnerability exploited through social engineering techniques.

Digital security is much like public health; it only works if there is "consistent hygiene" at all levels. This approach aims to safeguard three fundamental pillars, known by the acronym **CIA** [2, p. 22]:

- ***Confidentiality –*** ensuring that information is accessible only to authorized persons or systems. Example: Protecting the database containing police wiretap warrants against unauthorized access.
- ***Integrity –*** ensuring that data has not been altered or deleted without authorization. Example: Preventing the alteration of records in the Criminal Records Database or in personal identification databases.
- ***Availability –*** ensuring the continuous operation of systems. Example: Keeping the 112 system operational during a DDoS (Distributed Denial of Service) attack so that citizens can call emergency services.

We have seen a transition from "network security" [3] (viewed as a strictly administrative issue for the IT department) to "cyber security" [4]. Today, a cyberattack is no longer simply a technical error, but an act of aggression with major social consequences.

The social and economic impact can be seen in an attack on an electricity network or water distribution system; it can cause chaos and loss of life, being the functional equivalent of a bombing or physical sabotage of a power plant.

Security as the foundation of democracy can be compromised through the manipulation of voter databases or attacks on electronic voting infrastructure, which can pose direct threats to the constitutional order.

One example is the "Backmydata Ransomware" [5] attack on the IT systems of Romanian hospitals (February 11-12, 2024), which was not just a technical issue involving data encryption, but a public order crisis, as it blocked hospital admissions and surgical procedures, compromising the constitutional right to health.

Methods and materials applied. A comprehensive research methodology was employed in the preparation of this publication, drawing on methods specific to legal sciences and security studies.

The scientific approach was grounded in a qualitative analysis of the national and European regulatory framework, with a particular focus on Law No. 58/2023 [6] and the impact of the NIS 2 Directive [7] on Romania's security architecture.

Additionally, the historical method was used to illustrate the evolution of the concept of security from physical borders to cyberspace.

As a practical tool, this paper makes use of the case study method, analyzing real-world incidents (such as the ransomware attack on the healthcare system in February 2024) to illustrate systemic vulnerabilities.

The materials used include strategic documents (Romania's Cybersecurity Strategy 2022–2027 [4]), official reports from relevant institutions (DNSC, Cyberint), and specialized works from national and international doctrine.

Discussions and results obtained. **I. The National Strategic Framework**. Romania is aligning its security policies with Euro-Atlantic standards, with the central pillar of this effort being Romania's Cybersecurity Strategy for 2022-2027 [4].

The fundamental objective of this document is focused on the secure digitization of public services and on increasing the resilience of critical infrastructure.

In this context, the concept of resilience is defined as the ability of systems and institutions to maintain a minimum level of functionality during a cyber incident and to ensure rapid recovery of affected data and services.

The strategy defines a governance model based on multidimensional cooperation between the public, private, and academic sectors, aiming to transition from reactive to proactive management, focused on anticipating and preventing threats.

Key Strategic Directions:

➢ *Ensuring network resilience*: strengthening the security of information systems that support the state's critical functions (healthcare, energy, transportation, and the financial and banking sector);

➢ *Strengthening the regulatory framework*: aligning national legislation with new European regulations, particularly the NIS 2 Directive [7], to ensure a uniform level of protection across the entire Union;

➢ *Public-private partnership*: recognizing the critical role of private operators in managing critical infrastructure and the need for a constant flow of technical information exchange.

The strategic framework is implemented through the *National Cybersecurity System* (SNSC), which is coordinated at the political level by the *Supreme Council for National Defense* (CSAT).

The institutional architecture is supported by:

➢ *The National Cyber Security Directorate* (DNSC), which is a civilian authority responsible for regulation and incident response in the civilian sector;

➢ *The Romanian Intelligence Service* (*National Cyberint Center*), which is responsible for detecting and countering threats to national security;

➢ *The Ministry of Internal Affairs* (*MAI*), which manages the security of its own net-

works and, through specialized police units, combats cybercrime;

➢ *The Ministry of National Defense* (MApN), which ensures the cyber defense of military infrastructure through the *Cyber Defense Command*.

In conclusion, the National Strategic Framework goes beyond the scope of mere administrative regulations, serving as a strategic management tool that enables Romania to fulfill its role as a provider of security at the eastern border of NATO and the European Union.

II. Institutional Architecture. ***2.1. The National Directorate for Cyber Security (DNSC)*** [10] serves as the civil regulatory, supervisory, and oversight authority for the public and private sectors. The DNSC functions as the single point of contact at the national level for incident reporting, providing essential technical and methodological assistance to protect critical civil infrastructure.

For example, at the operational level, in the event of a massive *phishing* campaign targeting users of banking services in Romania, the DNSC issues real-time public alerts and collaborates with internet service providers to block access to malicious domains, while also providing technical assistance to affected banks for the analysis of malicious code.

2.2. The National Cyberint Center [11] part of the SRI is Romania's core cyber intelligence unit. Its primary mission is to identify, prevent, and counter attacks orchestrated by state actors or terrorist groups that target strategic interests and national security in cyberspace.

An operational example in the National Cyberint Center's remit involves identifying any attempt by a cybercrime group sponsored by a third country to infiltrate the IT network of a strategic institution (e.g., the Ministry of Energy). Cyberint detects the attacker's specific digital signatures and alerts the institution before sensitive data is extracted.

2.3. The Directorate for Combating Organized Crime (DCCO) [12] within the Romanian Police serves as the executive arm of the Ministry of Internal Affairs in this area. The DCCO focuses on the judicial aspect of cybersecurity, with responsibility for investigating criminal cases, collecting digital evidence, and holding perpetrators of cybercrimes accountable.

An example of a case handled by the DCCO involves the dismantling of an international cybercrime network that uses the "accident method" via messaging platforms. DCCO officers conduct *digital searches*, seize the servers used to store victims' data, and gather the evidence needed to bring the perpetrators to trial.

2.4. The Cyber Defense Command [13] within the Ministry of National Defense ensures the protection of military IT infrastructure and builds response capabilities (both defensive and offensive) in the context of national defense missions, integrating cyberspace into the military theater of operations.

For example, during a NATO multinational exercise conducted on Romanian territory, the Command ensures the *cyber protection* of the troops' tactical communications, thwarting attempts at jamming or digital interception originating from outside the theater of operations.

The entire framework is strategically coordinated by the Supreme Council for National Defense (CSAT), which ensures coherence among the civilian, military, and intelligence pillars.

An essential dimension of this architecture is international and regional cooperation.

In this context, the strategic partnership between Romania and the Republic of Mol-

dova in the field of cybersecurity serves as a model of best practices.

Through the constant exchange of technical information between the DNSC and its counterparts in the Republic of Moldova (such as the National Agency for Cybersecurity), the aim is to increase collective resilience along the European Union's eastern border, while also facilitating Chisinau's institutional alignment with EU standards.

An example of this could be the organization of joint exercises in which specialists from both countries simulate a response to a hybrid attack targeting natural gas distribution systems on both sides of the Prut River simultaneously, testing communication protocols and the exchange of technical data under pressure.

III. Analysis of Threats to National Security. Contemporary cyber threats are characterized by increased complexity and are classified in specialized doctrine based on the attackers' motives and the impact on society:

➢ *Cyber warfare*: refers to attacks orchestrated or supported by states with the aim of neutralizing the adversary's command and control systems or destroying critical infrastructure (energy, transportation). An example of this is "wiper" attacks (data deletion) used to paralyze government networks in the early stages of conventional armed conflicts.

➢ *Cyber spying*: involves the unlawful extraction of classified data, intellectual property, or strategic economic information to gain a competitive or political advantage. An example of cyber spying is APT (Advanced Persistent Threat) campaigns targeting the servers of foreign ministries or defense industry companies.

➢ *Hybrid threats*: involve the combined use of technical means (cyberattacks) and psychological operations (disinformation on social media) to erode citizens' trust in state institutions and destabilize the constitutional order. For example, hybrid threats can involve attacking the websites of electoral authorities while simultaneously spreading false news about vote rigging.

To these categories are added forms of aggression that have a direct impact on public order and social stability:

➢ *Cybercrime*: financially motivated attacks, ranging from bank fraud to ransomware campaigns that can paralyze the operations of hospitals or city halls. For example, ransomware campaigns that encrypt the data of hospitals or city halls, demanding money in exchange for the decryption key, thereby endangering citizens' lives (see the "Backmydata" case, 2024).

➢ *Cyberterrorism*: the use of cyberspace for recruitment, financing, propaganda, or planning attacks on critical infrastructure with the aim of causing widespread panic. An example of cyberterrorism is attacks on drinking water network control systems to disrupt the water supply to the population.

➢ "*Hacktivism*" [14]: attacks (such as DDoS attacks) carried out by non-state groups under the guise of ideological or political causes. An example of hacktivism is the takedown of government websites by groups protesting against legislative decisions.

Impact on security management:

– Accurately identifying the type of threat—a process known as attribution—is essential for determining the appropriate response.

– If the attack is assessed as spyware or state aggression, the response is coordinated primarily by intelligence agencies and the military.

– If the incident is classified as cybercrime, the primary responsibility for the criminal investigation falls to law enforcement agencies (DCCO/MAI).

However, in the virtual environment, the line between these actors is often blurred,

which requires ongoing interagency collaboration.

IV. New Legislation. Law No. 58/2023 [6] on Romania's cybersecurity and cyber defense is currently the fundamental piece of legislation that shapes the state's digital resilience ecosystem. It not only modernizes legal definitions but also establishes strict obligations for a wide range of entities, from public institutions to operators of essential services.

The legal framework requires public institutions and providers of essential services to report security incidents within a very short timeframe (24–72 hours) [8].

Also, security is no longer just the "IT person's" job; the head of the institution is directly responsible for implementing protective measures.

The main new and stricter provisions introduced by this legal framework (recently supplemented by the mechanisms for transposing the NIS 2 Directive) [7; 8; 9] include:

- *The obligation to report incidents*: critical infrastructure operators and service providers have a legal obligation to report cybersecurity incidents within extremely short timeframes. The process is phased: an early warning within 24 hours of becoming aware of the incident, followed by a full incident report within 72 hours. This speed is vital for the DNSC or Cyberint to be able to limit the spread of an attack at the national level;
- *Responsibility at senior management level*: perhaps the most significant paradigm shift is the shift of responsibility from the technical level (the IT department) to the decision-making level. According to the law, the head of the institution or entity is directly responsible for approving risk management measures and overseeing their implementation. In the event of non-compliance, the law provides for severe administrative penalties, emphasizing that cybersecurity is a component of strategic management, not merely an administrative task;
- *Extended scope of application*: the law and subsequent regulations (such as those from 2025 concerning critical entities) extend protection to new sectors, such as waste management, postal services, and chemical manufacturing, recognizing their interdependence within the digital economy;
- *Security audits*: the requirement for periodic cybersecurity audits, conducted by authorized entities, is introduced to verify the effectiveness of the implemented protective measures.

In conclusion, Law No.58/2023 [6] transforms cybersecurity from a technical and budgetary consideration into a legal compliance requirement that is essential to the stability of the state.

Conclusions and recommendations. The analysis shows that cybersecurity has evolved beyond a simple technical issue to become an integral and indispensable component of national security.

The recognition of cyberspace as an operational domain requires a profound shift in the institutional paradigm.

The implementation of the new legislative framework, particularly the provisions of Law No.58/2023 [6] and the NIS 2 Directive [7], marks significant progress by holding senior management directly accountable and imposing strict deadlines for incident reporting.

However, the technical and legislative framework cannot function effectively in the absence of a robust cybersecurity culture among human resources.

The human factor remains the weak link, a prime target for hybrid threats and social engineering. The findings of this study underscore that the transition from reactive to proactive and preventive management is imperative.

Last but not least, regional cooperation, exemplified by the strategic partnership with the Republic of Moldova, is an essential pillar for ensuring effective collective resilience at the eastern border of the European Union and the Euro-Atlantic area.

To further strengthen our cybersecurity posture, sustained and targeted efforts are required. To this end, ***the following proposals are recommended***:

1. *The continuous development of a cybersecurity culture* through massive investments in education and awareness programs at all levels of society, from the average citizen and the academic community to employees in the public and private sectors, in order to transform the potential "weak link" into an effective "defense wall." These must include regular training courses and social engineering attack simulations;
2. *Consolidating governance and inter-agency coordination* by optimizing information flows and response protocols between the DNSC, Cyberint, the Ministry of Internal Affairs, the Ministry of National Defense, and the Supreme Council for National Defense, ensuring a unified and rapid response to incidents, as well as the efficient allocation of resources;
3. *Stimulating public-private partnerships* by establishing mechanisms to build trust and facilitate the real-time exchange of technical information between public entities and private operators of critical infrastructure, thereby encouraging innovation and rapid adaptation to new threats;
4. *Strategic investments in advanced* technologies and expertise through the allocation of substantial funds for research and development in the field of cybersecurity, the acquisition of state-of-the-art technological solutions, and the recruitment and training of highly qualified specialists;
5. *Expanding and deepening regional and international cooperation* by stepping up joint tabletop exercises (TTX) and the exchange of best practices with strategic partners, in order to ensure a robust collective defense and contribute to regional stability.

By adopting these proactive measures and continuously strengthening digital resilience at all levels, Romania can not only ensure its own security in cyberspace but also actively contribute to global efforts to prevent and combat cybercrime, thereby reaffirming its role as a provider of security.

Bibliographical references

1. NATO, Warsaw Summit Communiqué – issued by the heads of state and government participating in the North Atlantic Council meeting in Warsaw, July 8-9, 2016, para. 71. Available: https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2016/07/09/warsaw-summit-communique (accessed 27.02.2026).
2. SRI, Guide to Best Practices for Cybersecurity, p.22. Available: https://www.sri.ro/assets/files/publicatii/ghid_de_securitate_cibernetica.pdf (accessed 27.02.2026).
3. Romanian Government Decision No.271 of May 15, 2013, approving Romania's Cybersecurity Strategy and the National Action Plan for the implementation of the National Cybersecurity System, published in the Official Gazette No.296 of May 23, 2013.
4. Romanian Government Decision No.1321 of December 30, 2021, approving Romania's Cybersecurity Strategy for the period 2022-2027, as well as the Action Plan for the Implementation of Romania's Cybersecurity Strategy for the period 2022–2027, published in the Official Gazette No.2 of January 3, 2022. Available: https://securitatea-cibernetica.ro/documente/Strategia-de-securitate-cibernetica-a-Romaniei.pdf (accessed 20.02.2026).
5. National Cyber Security Directorate. Available: https://www.dnsc.ro/citeste/

alert-backmydata-ransomware-spitale-romania#:~:text=During%20the%20night%20of%20the%2011th%20to%20the%2012th,DNSC%2C%20the%20attack%20disrupted%20the%20operations%20of%2026 (accessed 04.03.2026).
6. Law No.58 of March 14, 2023, on Romania's cybersecurity, as well as the amendment and supplementation of certain legislative acts, published in the Official Gazette No.214 of March 15, 2023.
7. Directive (EU) No.2555 of December 14, 2022, on measures for a high common level of cybersecurity in the Union, amending Regulation (EU) No.910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive), published in the Official Journal of the EU No. L 333 of December 27, 2022. Transposed into national law by Government Emergency Ordinance No.155/2024 and Law No.124/2025.
8. Government Emergency Ordinance No.155 of December 30, 2024, on the establishment of a framework for the cybersecurity of networks and information systems in the national civil cyberspace, published in the Official Gazette No.1332 of December 31, 2024, Art. 15, para. (7), subpara. (a) and (b).
9. Law No.124 of July 7, 2025, approving Government Emergency Ordinance No.155/2024 on the establishment of a framework for the cybersecurity of networks and information systems in the national civil cyberspace, published in the Official Gazette No.638 of July 7, 2025.
10. National Directorate for Cyber Security (DNSC). Available: https://www.dnsc.ro/.
11. Romanian Intelligence Service, National Cyberint Center. Available: https://www.sri.ro/cyberint.
12. Ministry of Internal Affairs, Romanian Police – Directorate for Combating Organized Crime. Available: https://politiaromana.ro/ro/politia-romana/unitati-centrale/directia-de-combatere-a-criminalitatii-organizate.
13. Ministry of National Defense. Cyber Defense Command. Available: https://www.cybercommand.ro/.
14. Cambridge Dictionary, definition of "hacktivism". Available: https://dictionary.cambridge.org/dictionary/english/hacktivism - "the act of breaking into computer systems without permission for political purposes" – unofficial translation.

CZU 343.98:504.4.054 **DOI: https://doi.org/10.5281/zenodo.20845008**

CRIMINALIZATION OF AIR POLLUTION: THE ROLE OF ARTICLE 230 OF THE CRIMINAL CODE OF THE REPUBLIC OF MOLDOVA IN PREVENTING ENVIRONMENTAL CRIME

Marcel BOȘCANEANU,
PhD, Associate Professor,
Head of the Studies and Quality Management Department,
"Ștefan cel Mare" Academy of Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-4776-9349

Abstract

This scientific study analyzes current issues regarding the legal framework for the criminalization of atmospheric air pollution through the lens of Article 230 of the Criminal Code of the Republic of Moldova and its role in preventing environmental crime. Atmospheric air is necessary for human survival and environmental conservation. The scientific community is concerned about the rapid and continuous growth of the population, which uses resources faster, and thus the accumulation of an enormous amount of waste will gradually worsen the quality of atmospheric air. The change in pollutants released into the atmosphere has become more complex throughout human history, as they are released in huge quantities. Sources of air pollution vary greatly - from fuel combustion, household, agricultural or mining activities, to natural disasters, significant industrial accidents or, more recently, the wars in Ukraine and the Middle East.

At the current stage, new techniques are being developed that monitor air composition to ensure air quality control. The population exposed to these harmful compounds is prone to various health problems, including skin, cardiovascular, brain, blood and lung diseases. The substances also contribute to global warming, acid rain and ozone depletion, which in turn lead to water and soil pollution and damage to flora and fauna. During the COVID-19 pandemic, it was observed that the reduction of human activities that cause pollution led to an improvement in the quality of atmospheric air, which shows that long-term solutions can also be found. Among the reasons for such an unfavorable environmental situation are, among others, violations of criminal environmental legislation, which establishes rules for the protection of atmospheric air.

Thus, in the content of the study we will refer more to atmospheric air as the object of the crime under Article 230 of the Criminal Code of the Republic of Moldova, because atmospheric pollution is one of the factors that shape the Earth's climate.

Keywords: atmospheric air pollution, atmospheric air, environmental crime, prevention of environmental crime, Article 230 Criminal Code of the Republic of Moldova.

INCRIMINAREA POLUĂRII AERULUI ATMOSFERIC: ROLUL ARTICOLULUI 230 DIN CODUL PENAL AL REPUBLCII MOLDOVA ÎN PREVENIREA CRIMINALITĂȚII DE MEDIU

Abstract

În prezentul studiu științific se analizează aspecte de actualitate privind cadrul legal al incriminării poluării aerului atmosferic prin prisma articolului 230 din Codul penal al Republicii Moldova și rolul acestuia în prevenirea criminalității de mediu. Aerul atmosferic este necesar pentru supraviețuirea umană și conservarea mediului. Comunitatea științifică este îngrijorată de creșterea rapidă și continuă a populației, care utilizează resursele mai rapid, iar astfel acumularea unei cantități enorme de deșeuri va înrăutăți treptat calitatea aerului atmosferic. Schimbarea poluanților eliberați în atmosferă a devenit mai complexă de-a lungul istoriei omenirii, aceștia fiind eliberați în cantități uriașe. Sursele de poluare a aerului variază foarte mult - de la arde-

rea combustibilului, activitățile casnice, agricole sau miniere, până la dezastre naturale, accidente industriale semnificative sau mai actual războaiele din Ucraina și Orientul mijlociu.

La etapa actuală se dezvoltă noi tehnici care monitorizează compoziția aerului pentru a asigura controlul calității aerului. Populația expusă la acești compuși nocivi este predispusă la diverse probleme de sănătate, inclusiv boli de piele, cardiovasculare, cerebrale, sanguine și pulmonare. Substanțele contribuie, de asemenea, la încălzirea globală, ploile acide și epuizarea stratului de ozon, care la rândul lor duc la poluarea apei și a solului și la daune aduse florei și faunei. În timpul pandemiei de COVID-19, s-a observat că reducerea activităților umane care cauzează poluarea a dus la îmbunătățirea calității aerului atmosferic, ceea ce arată că se pot găsi și soluții pe termen lung. Printre motivele unei astfel de situații de mediu nefavorabile se numără, printre altele, încălcările legislației de mediu cu caracter penal, care stabilește reguli pentru protecția aerului atmosferic.

Astfel, în conținutul studiului ne vom referi mai mult la aerul atmosferic ca obiect al infracțiunii de la articolul 230 din Codul penal al Republcii Moldova, deoarece poluarea atmosferică este unul dintre factorii care modelează clima Pământului.

Cuvintele-cheie: poluarea aerului atmosferic, aer atmosferic, criminalitate de mediu, prevenirea criminalității de mediu, articolul 230 Cod penal al Republicii Moldova.

Introduction. Atmospheric air pollution has a direct impact on public health. A clear correlation has been established between air pollution and respiratory diseases: bronchitis, tracheitis, asthma, pneumonia and lung cancer. Noise pollution has a negative effect on the nervous system, visual and vestibular systems and reduces reflex activity. Atmospheric air pollution also causes significant economic damage. The greatest losses occur in the housing and utilities, agriculture and forestry sectors. A correlation has been found between the cost of repairing urban residential buildings and the concentration of harmful substances in the air.

Air pollution is a global problem and poses a risk to human health and the environment. In the Republic of Moldova, atmospheric air quality is influenced by emissions from three types of polluting sources [9]:

➢ *Stationary fixed sources*, which include electrothermal power plants (CEPs) and boiler houses, operating industrial enterprises;

➢ *Mobile sources*, which include road, rail, air, river transport and agricultural machinery;

➢ *Transboundary transfer of pollutants*. Air pollutants emitted in one country can be transported through the movement of air masses in the atmosphere, contributing to or leading to poor air quality in other areas.

In fact, these circumstances determined the relevance and importance of the problem of legal and criminal protection of atmospheric air, as well as the choice of the topic of this research. One of the reasons for the rare practical application of the provision of criminal law establishing criminal liability for atmospheric air pollution is the imperfection of criminal and environmental legislation.

Criminal liability for air pollution is established by Article 230 of the Criminal Code of the Republic of Moldova (hereinafter – CC RM), which describes the elements of one of the main offenses and two qualified offenses (aggravating circumstances). The lack of clear elements characterizing the elements of the offense provided for in Art. 230 CC RM, distinguishing it from other offenses and misdemeanors, as well as insufficient methodological support for law enforcement officers pose certain difficulties in classifying such acts. Environmental damage, harm to human health and other losses to society caused by these offenses are difficult to assess. More precisely, the imperfection of criminal and environmental legislation also determines the imperfection of law enforcement practices.

The protection of atmospheric air is one of the essential dimensions of contemporary environmental policies, being closely linked to the guarantee of the fundamental

right to a healthy and ecologically balanced environment. In the Republic of Moldova, this protection is achieved including through criminal law, which intervene as a last resort instrument in combating acts with a high degree of social danger. In this context, a central role is played by the provisions of Art. 230 of the Criminal Code of the Republic of Moldova, which criminalizes atmospheric air pollution.

Article 230 of the Criminal Code of the Republic of Moldova falls under the category of crimes against the environment, aiming to protect social relations regarding the quality of atmospheric air, public health and ecological balance. From a doctrinal perspective, the criminalization of this act reflects the evolution of criminal law towards the protection of collective, diffuse values, which go beyond the sphere of individual interests.

The specific content of the violated obligations is established by non-criminal normative acts, such as legislation on environmental protection and air quality. This legislative technique allows the adaptation of the criminal norm to continuously evolving technical standards, but also generates difficulties in implementation, requiring interdisciplinary interpretations.

Methods and materials applied. In order to carry out this study, several methods were used, including: analysis, deduction, comparative, logical-legal, synthesis and systematic. At the same time, the research undertaken is based on studying the national and international legislation in force, existing in the given field.

Discussions and results obtained. Article 37 of the Constitution of the Republic of Moldova provides for the right of every person to an environment that is ecologically safe for life and health, as well as to harmless food products and household items [3].

In accordance with Article 1 of Law No.1515 of 16.06.1993 on Environmental Protection, the relations of man and society with the environment are regulated by the Constitution, this Law and the provisions of other laws and legislative acts that take into account the issues of environmental protection and rational use of natural resources. Accordingly, Art 4 para. (1) of the same Law specifies that: "Natural resources are understood as the soil, subsoil, waters, flora and fauna, located on the territory of the Republic, as well as the air in the space above this territory, constituting the national heritage of the Republic of Moldova".

In order to strengthen institutional capacities for monitoring and assessing air quality in order to identify and implement effective measures to reduce air pollutant emissions to levels that minimize harmful effects on human health and the environment as a whole, there is a special law on air quality at the national level, namely Law No.98 of 14.04.2022 [5]. Article 43 of this law expressly states that failure to comply with the provisions of this law and the normative acts approved under this law shall entail, as the case may be, civil or *criminal liability*, in accordance with the legislation.

Atmospheric air is a vital element of nature, an integral part of the habitat of people, plants and animals. The main useful function of atmospheric air is that it serves as an irreplaceable source of oxygen, necessary for the existence of all life on Earth.

In addition, atmospheric resources also play a significant role in human economic activity. The atmosphere is intensively exploited as a means of transport. Air is an integral component of industrial processes, thermal energy production and other human economic activities. At the same time, the atmosphere acts as a medium for the emission and dispersion of many types of pollutants generated as a result of the operation of various industries.

All the above-mentioned functions of atmospheric air, which it performs in relation to the plant and animal world, to people and society, represent the most important pre-

requisite for the state to ensure its rational use and protection.

The same circumstances predetermine the need for legal regulation of public relations regarding the use of atmospheric air and its protection from pollution and other harmful effects through environmental, civil, administrative, criminal and other branches of law.

The legal definition of atmospheric air is established by Law No.98 of 14.04.2022 on Atmospheric Air Quality [5], which is the main regulatory legal act establishing the legal framework for the protection of atmospheric air. According to Art. 3 of the aforementioned law, atmospheric air is a mixture of gases that make up the lower layer of the Earth's atmosphere (for the purposes of this law – the troposphere).

If we analyze this concept, we can identify several criteria established by law to define atmospheric air:

1) *Environmental criterion*:

a) Atmospheric air is a component of the environment as a whole;

b) It is a natural mixture of atmospheric gases (not created by man under artificial conditions);

2) *Spatial criterion*. That is, only air located outside residential, industrial and other premises will be considered atmospheric air.

It should be noted that both criteria generally characterize atmospheric air as a component of the environment, an element of nature, which appears as a result of natural processes occurring within it and not as a result of economic or other human activity.

If we refer to various aspects of the concept of "environment", we can highlight the most important ones, in particular: the environment is the operational basis for various human activities, the totality of natural elements – that is, those created by nature, but to a greater or lesser extent transformed by people – which constitute the living conditions of people in a certain place and time; it is the entire material world, external to human society, which surrounds society. The environment exists as a whole, taken at different scales and in various combinations, and not just as a totality of individual elements, natural resources and natural objects. It is emphasized that the environment serves as a condition and means of human life, the territory in which it lives, the spatial limit of state power and the location of industrial, agricultural, cultural and other facilities.

From the specialized literature we know that atmospheric air is made up of a mixture of gases that form the gaseous envelope of the Earth (terrestrial atmosphere). The main composition of atmospheric air is: mainly nitrogen (about 78%), oxygen (about 21%), argon (about 0.93%), carbon dioxide (about 0.04%). In addition, atmospheric air contains in small quantities: water vapor (variable: 0–4%), rare gases: neon, helium, krypton, xenon, ozone (important for protection against UV radiation – the ozone layer). Depending on the area, the air may also contain dust and particles (PM10, PM2.5), smoke, polluting gases (SO_2, NO_2 carbon monoxide). This percentage ratio of gases constitutes the atmospheric air that is typical for the soil layer of the atmosphere.

Thus, atmospheric air can be defined as a vital component of the environment, representing a natural mixture of gases outside any room and, in interaction with other components, providing favorable conditions for life on Earth. Atmospheric air pollution or other changes in its natural properties pose a threat to the life and health of humans, animals and plants.

To cement its legal protection, atmospheric air is legally recognized as the object of several crimes, including crimes against the environment, as provided for in Chapter IX of the Criminal Code of the Republic of Moldova, in particular, the crime of atmospheric

air pollution that we are analyzing (Article 230 of the Criminal Code of the Republic of Moldova).

The commission of a crime from an objective point of view, as a rule, is associated with the impact of the perpetrator on the material objects of the external world. The object of a crime can be discussed in cases where the harm caused to the object of the crime is necessarily related to the damage to a material good within the scope of that good. In the case of crimes against the environment, such goods are components of the environment.

The object of a crime plays an important role in both legislative and law enforcement practice when describing the elements and classifications of crimes. Therefore, together with the object of the crime, it is necessary to establish the other elements of its composition.

In this sense, the object of the crime in conjunction with the other elements of the crime composition (the objective side, the subject and the subjective side) constitutes the legal basis for criminal liability. The notion of the object of the crime is not defined in the legislation, but from the content of Article 15 of the Criminal Code of the Republic of Moldova [2] its significance in determining the harmful degree of a crime is clear. The more important the social value and social relationship achieved by the criminal act, the higher the degree of social danger of the respective act. At the same time, the definition of the notion of the object of the crime is found in the legal doctrine. Thus, according to an opinion, to which we subscribe, the object of the crime is represented by "social values and social relationships, which require criminal defense, in whose consolidation and development society is interested and which, through the antisocial behavior of a person, are or may be significantly harmed" [1, p.35]. The social values protected by the criminal law are listed enumeratively in paragraph (1) of Article 2 of the Criminal Code: "the person, his rights and freedoms, property, environment, constitutional order, sovereignty, independence and territorial integrity of the Republic of Moldova, peace and security of mankind, as well as the entire legal order". In this context, we specify that not only social values are protected by the criminal law, but also the social relations related to these values. Regarding the correlation between social relations and social values, S. Brînza rightly argues that "social relations are realities external to social value, they pre-exist social value and serve as a factor for evaluating and attributing the attribute of value to certain entities that correspond to the interests of society" [1, p.31]. In other words, social relations are built and developed around social values with which they are in a relationship of interdependence.

Thus, we can confidently state that the object of a crime in the theory of criminal law must be understood as the things in relation to or in connection with which a crime is committed.

Next, after this brief account of some general notions regarding the object of the crime, we will focus our attention on the actual analysis of the object of the crime provided for in Article 230 of the Criminal Code of the Republic of Moldova. If we refer to the definition of atmospheric air as the object of atmospheric pollution, we must first consider the concept of the subject of a crime.

The problem of defining the subject of an environmental crime is directly related to the issue of understanding the object of an environmental crime. Since the subject and object of the crime are related as part and whole, it is impossible to determine the part of the whole without taking into account the whole. E.N. Jevlakov rightly writes that: "in environmental crimes, the subject of the crime must always be considered in connection

with and alongside the object. An isolated analysis of the subject does not allow clarifying the relationship to which the harm is caused, which leads to errors and confusion in the classification of the crime" [8, p.57].

The social danger posed by environmental crimes stems from the fact that they attack the stability of the environment and the potential of natural resources, as well as everyone's right to a healthy environment, guaranteed by Article 37 of the Constitution of the Republic of Moldova. The degree of social danger of these crimes depends on the social significance of the object of the attack and is determined by the extent of the damage caused by the crime.

The object of a crime is what the crime attacks, that is, what it targets, what it violates, and what it causes or may cause damage to.

The problem of the social value protected by law that is affected or endangered by the crime is one of the most controversial in the theory of criminal law. In the science of criminal law, there are four main approaches to the object of the crime: 1) social relations; 2) social relations and legal norms; 3) social relations and the productive forces of society, that is, people, tools and means of use; 4) the actual object of the crime. In this case, when determining the object of a crime in accordance with the prevailing concept, the starting point is the recognition of social relations as such.

In our opinion, the theory of "object of crime – social relations" seems to be the most accurate. Of course, the problem of defining the object of crime deserves a detailed analysis, but it goes beyond the scope of this work. We will approach the concept of object of crime only in relation to crimes against the environment in general and atmospheric air pollution in particular.

Understanding the object of environmental crimes has long been one of the most controversial issues in the national criminal law literature. Approaches to understanding its resolution have evolved as environmental and criminal legislation have developed and improved.

A broad understanding of the object of environmental crimes was formulated in the works of X. Ulianovschi. According to him, the object of environmental crimes is complex social relations, protected by the norms of criminal law, regarding the rational use of natural resources, the preservation of a qualitative environment for living beings and ensuring the ecological security of the population, an opinion that is similar to our position regarding the generic legal object of environmental crimes. The special legal object of environmental crimes is social relations regarding the protection and rational use of certain types and forms of natural resources and ensuring the ecological security of the population. Each environmental crime has a special legal object [6, p.45].

In our opinion, the generic object of the crime is the normal relationship between people regarding the environment as the basis of the existence and vital functions of human society. These relationships mediate the functioning of the "man-environment" system, including both the use of natural resources and the deliberate impact of man on nature for the purpose of its preservation and improvement. The direct objects of individual crimes are social values determined by the functions of the environment in human life.

Based on the prevailing opinion in the domestic criminal law doctrine regarding the object of the crime as the social relations protected by criminal law, which the offender violates, the object of environmental crimes is recognized as a complex, integral set of concrete social relations. This complex includes social relations regarding the environment as a whole and its individual components, regulated and protected by legal norms, which, by their content, concern the ownership of natural resources, nature manage-

ment, protection of the environment from harmful impacts, as well as the protection of environmental rights and legitimate interests of individuals and citizens.

Contemporary russian literature also supports a different approach to understanding the object of environmental crimes. A.E. Jalinskii emphasizes that the first meaning of this concept reveals it as a fundamental socio-legal value (a legal benefit) protected by criminal law, while the second – as an element of the composition of the crime [7, p.359].

Considering all of the above, in this research, we will understand as the main object of environmental crimes the social relations regarding ensuring environmental safety and ecological order. However, we must take into account the data on the classification of the objects of the crime in relation to the atmospheric air pollution we are studying.

The common object of all crimes provided for by the Criminal Code of the Republic of Moldova, including atmospheric air pollution, is the totality of all social relations protected by criminal law against criminal attacks.

The list of social relations protected by criminal law is provided for in Article 2 of the Criminal Code of the Republic of Moldova [2]. These include the person, his rights and freedoms, property, the environment, the constitutional order, the sovereignty, independence and territorial integrity of the Republic of Moldova, peace and security of mankind, as well as the entire legal order. As we can see, the general object of the crime, formulated in Art. 2 CC RM, among other things, also provides for the protection of the environment as one of the main objectives of criminal law.

The title of the chapter of the Criminal Code of the Republic of Moldova corresponds to the group of social relations that are protected by its norms from the crimes specified therein and characterizes their generic subject matter. Despite the fact that the environment is specifically mentioned in Article 2 of the Criminal Code of the Republic of Moldova, structural environmental crimes are provided for in Chapter IX called "Environmental Crimes".

As we know, in the criminal law literature, a specific object is understood as the object that is targeted by a certain type of crime. As mentioned earlier, public relations regarding environmental safety act as a specific object of all environmental crimes, including atmospheric air pollution, which correlates with the generic object of the crime, both as specific and as general. Environmental safety is an integral part of public safety.

This point is also mentioned in the new National Security Strategy of the Republic of Moldova approved by Government Decision No.391/2023 [4], namely in Article 8 it is mentioned that one of the national security objectives of the Republic of Moldova is the protection of the environment.

Environmental laws and order represent the state of compliance by all persons with all established standards and rules of ecological conduct.

As for the direct object of air pollution, it is represented by social relations related to ensuring environmental safety, protection and rational use of atmospheric air. The main direct object of the investigated crime is, as previously mentioned, public relations related to ensuring environmental safety, protection and rational use of atmospheric air.

The need to identify the additional direct object of qualified compounds to air pollution as additional direct targets of crime is primarily due to the fact that, ultimately, any negative impact on nature, including atmospheric air, can affect human health.

In addition, an optional object of air pollution may be, for example, public relations regarding property protection in case of property damage, animal death, depopulation and/or contamination of flora, fauna, biodiversity, damage to the health of the population.

It should be noted that personal safety, health of the population (safety of life, health and property) is an element of environmental safety and, therefore, is subject to criminal protection under Article 230 of the Criminal Code of the Republic of Moldova, not in itself, but only in conjunction with public relations to ensure environmental safety, protection and rational use of atmospheric air.

Therefore, a part of public safety is environmental safety, which represents the state of protection of two interconnected components: human life and health from threats to the environment and the natural environment from the negative impact of human activity. Thus, social relations aimed at ensuring the safety of human life, health and property are objects of air pollution only in the context of their protection from the negative impact of the atmosphere, which, in turn, has been subjected to pollution and other negative changes as a result of exceeding the permissible emissions limits and/or maximum permissible concentrations, as a result of the emission or discharge into the atmosphere of pollutants or violation of operating rules or as a result of non-use of equipment, apparatus, purification and control installations for emissions into the atmosphere, if there was a danger of causing damage to the environment or health of the population.

That is, the existence of the danger of causing damage to the environment or the health of the population, socially dangerous consequences in the form of damage in particularly large proportions, the death of a person due to imprudence, etc., are conditioned by the deterioration of the environment, atmospheric air pollution.

On the other hand, causing material damage in large or especially large proportions or harm to the health of the population as a result of, or during, economic or other activities that do not pollute the atmosphere does not constitute a crime against the environment and constitutes a general crime against human life and health, property and public health. In this case, the personal safety of a person is an independent object of protection of criminal law under other chapters of the Special Part of the Criminal Code of the Republic of Moldova.

This provision has an important practical significance, as it allows us to distinguish atmospheric air pollution from other crimes provided for by other chapters of the Criminal Code of the Republic of Moldova.

In our opinion, environmental crimes target components of the environment and natural objects. Ecologically harmful anthropogenic objects should not be considered as the object of environmental crimes, since their existence may, in fact, be a means of introducing negative changes in the environment or its components. For example, emissions of harmful substances pollute the air or dumping of waste into water bodies harms a water body.

The object of the crime provided for in Article 230 of the Criminal Code of the Republic of Moldova is a vital component of the environment, an integral part of the habitat of people, plants and animals, such as atmospheric air. The object of the violation of the crimes includes the atmosphere, atmospheric air and its natural properties, taken together. We believe that the existence of such notions is primarily due to the fact that the current environmental legislation does not make a clear distinction between concepts such as “atmosphere” and “atmospheric air”. Thus, the concepts of “atmosphere” and “atmospheric air” in their natural scientific interpretation are linked as a whole and a part.

Indeed, based on a literal interpretation of Art. 230 of the Criminal Code of the Republic of Moldova, it must be concluded that the object of the crime is precisely the atmospheric air, since the atmosphere is not mentioned in the criminal law. In addition, causing damage to the atmospheric air does not exclude damage to the atmosphere as a

whole.

A broad understanding of the object of environmental crimes was formulated in the works of X. Ulianovschi. According to him, the generic legal object of the crime of air pollution is the social relations protected by criminal law regarding the rational use of natural resources, the protection of a healthy environment for people and other living beings, ensuring ecological discipline and the security of the population. The special legal object of the crime is the group of homogeneous social relations related to the protection of natural resources. The secondary special legal object of this crime is the social relations related to the health and bodily integrity of people and the national economy [6, p.84].

At the same time, it is absolutely clear that there is a need for clarification and harmonization of the terms used in modern natural sciences, criminal law and environmental legislation.

In this regard, it is necessary to clarify that in this article, the term "atmospheric air pollution" will be used in the meaning given to it by the Criminal Code of the Republic of Moldova, for the purpose of designating the title and content of Article 230.

It should also be noted that the concept of "air pollution" reflects the most widespread type of negative human impact on this component of the environment and the most frequent socially dangerous consequence of the acts specified in para. (1) of Art. 230 of the Criminal Code of the Republic of Moldova, a fact confirmed by the analysis of judicial practice. Therefore, we believe that the title of Art. 230 of the Criminal Code of the Republic of Moldova — "Atmospheric Air Pollution" — fully reflects the content of this article of the current criminal law.

Atmospheric air, like any other natural gas, has certain natural properties. Clarification of the list of natural properties of air has not only scientific, but also criminal-legal significance for the classification of a crime, since their pollution is specified in the provisions of Art. 230 of the Criminal Code as one of the socially dangerous consequences of the committed act.

The significance of the object of atmospheric air pollution that we have examined lies in the fact that they allow us to understand the social and legal nature of this offense, its impact on other components of the environment and natural objects, and serve as a criterion for distinguishing this offense from other offenses provided for in Chapter IX and other chapters of the Criminal Code of the Republic of Moldova, and therefore play an important role in the classification of offenses.

For example, air pollution may occur during the commission of other crimes, such as Failure to fulfill or improper fulfillment of duties to comply with legislation on environmental protection (Article 223^1 of the Criminal Code), Violation of the rules for the management of chemical substances and products, waste, including hazardous and radioactive waste (Article 224 of the Criminal Code).

Therefore, when distinguishing between these types of crimes, it is necessary to consider the question of what specific object the perpetrator attacks or what object is directly harmed as a result of the socially dangerous act. Thus, when committing intentional crimes against life and health, the main direct object of the crime will be social relations that ensure the safety of human life and health, rather than social relations that ensure environmental safety, protection and rational use of atmospheric air.

Regarding the object of the crime, a distinction must be made between air pollution and acts of terrorism, sabotage and ecocide, the direct objects of which are, respectively, social relations aimed at ensuring public safety, economic security and the country's defense capacity, as well as safe environmental conditions for the existence of humanity.

It should be noted that, while the object of the crime is the main criterion for distinguishing between the elements of the crimes provided for in different chapters of the Criminal Code of the Republic of Moldova, determining the object of the crime – the component of the environment or the natural object that the perpetrator violates – is the simplest criterion for distinguishing between the elements of environmental crimes.

In particular, by means of the object of the crime, a distinction can be made between the crime of atmospheric air pollution Art. 230 and the other crimes in the same chapter, such as those provided for in Art. 223 – Violation of environmental safety requirements; Art. 223[1] – Failure to fulfill or improper fulfillment of duties to comply with legislation on environmental protection; Art. 224 – Violation of the rules for the management of chemical substances and products, waste, including hazardous and radioactive waste; Art. 227 – Soil pollution; Art. 229 – Water pollution.

The main objective of the analysis of criminal law sources establishing criminal liability for violations of public relations in the field of environmental protection was a comprehensive study and critical understanding of the development of norms on criminal liability for atmospheric air pollution.

Conclusion. The preventive function of the criminal norm is essential in the field of environmental protection. Article 230 of the Criminal Code of the Republic of Moldova contributes to the prevention of environmental crime through several mechanisms. First, through the deterrent effect, the criminal norm imposes on economic agents the obligation to comply with environmental standards, under penalty of severe penalties. Second, the norm has an educational and symbolic role, affirming the importance of protecting atmospheric air as a fundamental social value. This dimension is particularly relevant in the context of increasing environmental awareness. Third, Article 230 CC stimulates voluntary compliance, causing economic operators to invest in non-polluting technologies and emission control systems.

However, there are also some shortcomings in the criminalization of this illegality. One obstacle is the evidentiary difficulties, in particular: establishing the level of pollution in the existence of the danger of causing damage to the environment or the health of the population; identifying the exact source, etc. Also, the character of the blank norm implies a strong dependence on extra-criminal, environmental-specific regulations, which can generate legal uncertainty.

But one thing is encouraging, that contemporary doctrine is taking shape on the tendency to strengthen the preventive role of environmental criminal law by: expanding the incriminations of danger; reducing the threshold of criminal intervention; strengthening the liability of legal entities; harmonizing with European standards in environmental protection. All of this has also been achieved in the criminal legal framework on the crime of atmospheric air pollution from Article 230 of the Criminal Code of the Republic of Moldova.

Thus, in order to increase the efficiency of environmental crime prevention, it was necessary to reconfigure criminalization in the sense of capitalizing on the model of dangerous crimes, which would allow for the sanctioning of polluting behavior before serious consequences occur.

The dependence of Article 230 on extra-criminal regulations allows for adaptation to the evolution of technical standards, but creates difficulties in interpretation and application. In practice, this determines an increase in the role of expertise and a relative unpredictability of the criminal norm.

Therefore, Article 230 of the Criminal Code of the Republic of Moldova represents an

essential legal instrument in combating air pollution in the Republic of Moldova. Although its effectiveness is limited by certain normative and practical constraints, its preventive role cannot be ignored, contributing to discouraging polluting behaviors and strengthening environmental protection.

The criminalization provided for in Art. 230 CC confirm the tendency of modern criminal law to protect collective values, such as the environment, independently of the existence of direct individual harm. Thus, atmospheric air is elevated to the rank of a distinct legal object, which reflects the conceptual evolution of criminal law towards the field of diffuse interests.

Since the main sources of pollution are industrial activities, the effectiveness of Article 230 CC directly depends on the effective application of criminal liability of legal persons. This constitutes an essential tool for the prevention of large-scale environmental crime.

The evolution of national norms is influenced by European standards, which promote a firmer approach to environmental crime. In this context, Article 230 is susceptible to modernization, in order to align it with contemporary requirements regarding the prevention and sanctioning of pollution.

In the future, making this criminalization more efficient requires an integrated approach, combining criminal instruments with administrative, environmental and economic ones, in order to ensure a high level of protection of atmospheric air.

Article 230 of the Criminal Code of the Republic of Moldova constitutes an important pillar of the criminal protection of atmospheric air in the Republic of Moldova, but its preventive efficiency is conditioned by overcoming the current limits of the regulation. A reform oriented towards criminalization of danger, normative clarity and systemic integration would allow transforming this norm into a genuine instrument for combating environmental crime.

Bibliographical references

1. Brînză S. Obiectul infracţiunilor contra patrimoniului. Chişinău, Editura: USM, 2005. 675 p.
2. Codul penal al Republicii Moldova nr.985 din 18.04.2002. În: Monitorul Oficial al Republcii Moldova, 14.04.2009, nr.72-74.
3. Constituția Republicii Moldova nr.1 din 29 iulie 1994. În: Monitorul Oficial al Republicii Moldova, 13.11.2024, nr.466.
4. Hotărârea Guvernului al Republicii Moldova nr.391 din 15.12.2023 privind aprobarea Strategiei securității naționale a Republicii Moldova. În Monitorul Oficial al Republcii Moldova, 17.01.2024, nr.17-19.
5. Legea Republicii Moldova nr.98 din 14.04.2022 privind calitatea aerului atmosferic. În Monitorul Oficial al Republcii Moldova, 13.05.2022, nr.141-150.
6. Ulianovschi X. Infracțiuni Ecologice. Ghid medotic. Editura: USM, Chișinău, 2024. 177 p.
7. Жалинский А.Э. Уголовное право в ожидании перемен: теоретико-инструментальный анализ. 2-е изд., перераб. и доп. – М.: Проспект, 2009. 400 с.
8. Жевлаков Э.Н. Уголовно-правовая охрана природной среды в Российской Федерации. М.: ЗАО «Бизнес-школа «Интел-Синтез», 1997. 184 с.
9. https://am.gov.md/ro/content/sursele-de-poluare-aerului?utm_source=chatgpt.com (accesat 14.04.2026).

CZU 343.98 **DOI: https://doi.org/10.5281/zenodo.20845072**

CRIME SCENE INVESTIGATION IN THE DIGITAL ERA: THE CONTRIBUTION OF 3D SCANNING TECHNOLOGY

Lucia-Narcisa DUMITRAȘCU,
Police Inspector,
Faculty of Police,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0004-0214-1920

Abstract

This article examines the use of 3D scanning technologies in crime scene investigation, highlighting their role in the modernization of forensic methods and techniques. Three-dimensional scanning enables rapid and accurate documentation of the crime scene, allowing for digital reconstruction and subsequent analysis without the need for further physical intervention. Due to its non-invasive nature, this technique contributes to the preservation of the scene and reduces the risk of losing relevant details.

The paper focuses on the main advantages of this technology, such as high accuracy, efficiency in data collection, and the facilitation of collaboration among specialists, while also addressing practical limitations, including associated costs, the large volume of generated data, and the need for adequate professional training. The experiences of other countries are also considered, providing a basis for identifying directions for optimization and national-level adaptation.

Furthermore, the importance of standardizing usage procedures and integrating these technologies into existing working methodologies is emphasized. Thus, 3D scanning emerges as a valuable tool in forensic practice, with the potential to enhance the efficiency of the entire investigative process, provided that it is properly integrated into existing procedures and supported by appropriate technical and human resources.

Keywords: 3D scanning, photogrammetry, LiDAR, crime scene, traces.

INVESTIGAREA LOCULUI FAPTEI ÎN ERA DIGITALĂ: APORTUL TEHNOLOGIEI DE SCANARE 3D

Abstract

Prezentul articol abordează utilizarea tehnologiilor de scanare 3D în cercetarea la fața locului, evidențiind rolul acestora în contextul modernizării metodelor și tehnicilor criminalistice. Scanarea tridimensională permite o documentare rapidă și precisă a locului faptei, oferind posibilitatea reconstituirii digitale și analizării ulterioare fără intervenții suplimentare. Prin caracterul său non-invaziv, această tehnică contribuie la conservarea locului faptei și reduce riscul pierderii unor detalii relevante.

Lucrarea se concentrează asupra principalelor avantaje ale utilizării acestei tehnici, precum acuratețea ridicată, eficiența în colectarea datelor și facilitarea colaborării între specialiști, dar și asupra limitărilor întâlnite în practică, inclusiv costurile asociate, volumul mare de date generate și necesitatea formării profesionale adecvate. Sunt luate în vedere experiențele altor țări ce permit conturarea unor direcții de optimizare și adaptare la nivel național.

De asemenea, este subliniată importanța standardizării procedurilor de utilizare și integrării acestor tehnologii în cadrul metodologiilor de lucru. Astfel, scanarea 3D devine un instrument util în activitatea criminalistică, cu potențial de eficientizare a întregului proces de investigare, în măsura în care este integrată corespunzător în procedurile existente și susținută de resurse tehnice și umane adecvate.

Cuvinte-cheie: scanare 3D, fotogrammetrie, LiDAR, locul faptei, urme.

Introduction. In the context of transformations driven by digitalization, forensic sciences are undergoing significant evolution, characterized by the integration of advanced technologies into specific investigative activities. Crime scene investigation, as a fundamental stage of the criminal process, is subject to these changes, requiring the adaptation of traditional methods to new demands regarding accuracy, speed, and objectivity in documentation.

Within this framework, 3D scanning technologies emerge as modern tools for documenting the crime scene, enabling the creation of detailed and accurate digital representations of reality. Compared to classical methods, these technologies allow for comprehensive, non-invasive documentation, as well as the possibility of subsequent reanalysis of the scene without compromising the integrity of the evidence.

The present approach aims to highlight the role of 3D scanning technology in crime scene investigation by analyzing its advantages, limitations, and prospects for integration into contemporary forensic practice.

Methods and materials applied. This paper is based on a qualitative approach, grounded in the analysis of specialized literature and the comparative examination of relevant studies in the field of 3D scanning technologies applied to crime scene investigation. Recent scientific sources, indexed articles, and reference works in forensic science and digital technologies were used in order to highlight the main directions of development and practical applicability of these methods.

From a methodological perspective, the research was conducted through a descriptive and comparative analysis of the main technologies used for three-dimensional documentation of the crime scene, with a focus on their operating principles, advantages, and limitations. At the same time, relevant case studies and examples of best practices were integrated, illustrating the practical use of these technologies in the activity of judicial authorities.

Discussions and results obtained. I. Introductory Aspects of Crime Scene Investigation. Crime scene investigation represents the activity that marks the beginning of the criminal investigation and leads to the complete, direct, and immediate understanding of the location where the act under investigation occurred [1, p.357].

This preliminary activity, which ensures the direct perception by the judicial authority of the place where the offense was committed [2, p.236], primarily aims at the discovery of traces and the identification of relevant elements necessary for establishing the perpetrator, clarifying the circumstances of the offense, and identifying material evidence, as well as obtaining accurate and reliable data through the direct examination of the crime scene regarding the modus operandi and the offender's identity [1, p.358].

Thus, beyond direct knowledge, the purpose of crime scene investigation is to document and collect material traces created during the commission of the offense, in order to identify victims and perpetrators, as well as to locate and interview eyewitnesses or other individuals who possess relevant information about the act [4, p.160].

With regard to the manner in which this activity is carried out, ensuring the presence of the judicial authority at the crime scene represents "one of the most effective procedural measures" [4, p.9], as it is an activity through which the very purpose of the criminal process is achieved, leading to the establishment of judicial truth.

Crime scene investigation must be conducted as soon as possible after the occurrence of the offense. Its prompt nature prevents the degradation or disappearance of traces and contributes to the identification of witnesses [2, p.239], while also reducing the time advantage available to the perpetrator [4, p.16]. Although these aspects are primarily

tactical in nature, the timely exploitation of traces, as close as possible to the moment of the offense, constitutes one of the most significant advantages of this operational character.

Judicial practice has also recorded situations in which the investigation is delayed, such as when the offense is discovered after a certain period of time or when the location where the main acts of the offense took place was not initially known. Specialized literature highlights such situations and recommends that all inherent changes be taken into account and, where traces can still be identified, that they be interpreted with caution, considering all possible alterations [5, p.509].

Moreover, it is essential that the crime scene be examined with attention to all relevant aspects and every detail [1, p.364], as the establishment of the truth regarding both the circumstances of the case and the identity of the perpetrator directly depends on it [6, p.184]. A higher level of attention and a greater number of recorded details contribute to ensuring the establishment of judicial truth, understood as truth grounded in evidence and means of proof, where material evidence provides substantive support.

In addition to its initial, immediate, and mandatory character, crime scene investigation is an activity that, as a rule, is not repeated, and its working procedures and manner of execution confer upon it an organized character [7, p.11-12]. It should be noted that crime scene investigation is not strictly limited in time, and the resumption of certain phases should not be confused with repetition in the sense of re-performing the static and dynamic phases, which would effectively constitute a new investigation of the same scene.

At the same time, given the complexity of this activity, it is essential that each member of the investigative team has clearly defined roles and responsibilities, ensuring that the evidentiary procedure achieves its intended purpose.

II. 3D Scanning – Concepts and General Aspects. Starting from the detection technology used, namely the mechanism by which areas and objects in the real environment are captured and converted into digital representations, the main methods of crime scene scanning highlighted in the specialized literature [8, p.56-85] are laser scanning, photogrammetry, and RGB-D scanning.

While photogrammetry captures fine details more effectively by generating denser point clouds, laser scanning provides a more comprehensive understanding of the overall geometry of the crime scene [9, p.22-33], with lower associated error rates [10].

Following several comparative studies between photogrammetry and laser scanning, it has been concluded that the optimal approach consists in the combined use of both technologies for crime scene processing [10]. This view is supported by multiple specialists. One study [9, p.22-33; 8, p.56-85] proposes, for high-quality indoor crime scene documentation, the combination of the FARO Focus3D X 330 with the portable FARO Freestyle, while for large outdoor environments it recommends the use of aerial photogrammetry alongside terrestrial laser scanning with the FARO Focus S70.

Supporting the same perspective is the proposal to combine terrestrial laser scanning with close-range photogrammetry in order to obtain high-precision 3D data during crime scene reconstruction, by overcoming limitations such as device positioning, shadows, object distance, and laser beam angles that may prevent the creation of a complete model [11].

A laser scanner is a device specifically designed for scanning the surrounding environment, operating by emitting laser beams and calculating distance based on the reflected signal. A widely used laser-based sensor in crime scene investigation is the LiDAR

system, which currently exists in three main forms: terrestrial, aerial, and mobile [12].

LiDAR technology is based on the emission of laser pulses and the measurement of the time required for these pulses to reach an object and return to the sensor. In this process, the system emits short-duration laser beams, typically in the infrared spectrum, which propagate through the environment at the speed of light. When these pulses encounter an object, part of their energy is reflected back toward the receiver.

The reflected signal is detected by the sensor, which records both the return time and its characteristics. Based on the propagation time and the known speed of light, the system calculates the distance between the sensor and the targeted object. By repeating this process for a large number of laser pulses, a three-dimensional representation of the analyzed environment is generated [13, p.164-172].

The scanning of space using this method is materialized through the processing, within dedicated software, of a 3D model in the form of a point cloud [12]. These 3D models allow not only the visualization of the crime scene, but also various analytical activities, such as determining shape, size, and distances between objects, observing objects in detail from multiple angles and distances, reconstructing damaged objects, performing situational modeling by establishing cause–effect relationships, and conducting reverse modeling for comparative analysis [9].

The use of LiDAR systems ensures extensive coverage, having the capability to capture data from large areas, which allows measurements over longer distances. In addition, due to improved signal processing algorithms and higher-resolution detectors, accuracy and precision are enhanced in long-range measurements. As a result, LiDAR systems are capable of capturing fine details with high fidelity [13, p.164-172].

When compared to photogrammetry, LiDAR proves to be effective even in low-light conditions, whereas photogrammetry performance is significantly affected by insufficient lighting. Moreover, crime scene documentation using LiDAR technology is faster, while photogrammetry requires the capture of multiple images and more complex subsequent processing [10].

III. Advantages and Limitations of 3D Crime Scene Scanning. The accurate and comprehensive documentation of the crime scene represents an essential condition for the effective conduct of the criminal process, as it ensures the preservation and proper use of evidence in establishing judicial truth. Traditionally, the technical methods of documentation identified in the specialized literature [1, p.366] include forensic photography, sketches, and audio-video recordings. Combined with direct measurements, these conventional methods present certain limitations in terms of execution time and the possibility of subsequent reanalysis of the crime scene.

In this context, the development of three-dimensional scanning technologies has led to a profound transformation in forensic documentation, enabling the creation of digital representations that faithfully reproduce reality.

3D scanning technologies allow for the generation of detailed digital models of the physical environment, which can subsequently be analyzed independently of direct access to the crime scene. This feature is particularly important, as it enables judicial authorities to revisit the crime scene virtually, perform additional measurements, and test investigative hypotheses without compromising the integrity of the evidence.

Furthermore, in recent years, modern technologies have gained increasing importance in the reconstruction of road traffic accidents, contributing to the accurate determination of event dynamics and the interaction between vehicles and victims [14].

3.1. Crime Scene Processing Time is Significantly Reduced. As previously high-

lighted, a key aspect of crime scene intervention is its operational character. In practice, investigators are often required to act under difficult conditions, under time pressure, and in potentially hazardous environments. In such situations, 3D scanning technologies provide a significant advantage by enabling rapid scene capture and reducing direct interaction with traces. Thus, the use of LiDAR scanners can lead to the acquisition of three-dimensional models within a very short time frame, sometimes in a matter of minutes [15, p.32-39].

Compared to traditional methods, where the documentation of an extensive crime scene may take several hours and require the involvement of multiple specialists, 3D scanning significantly reduces intervention time. This aspect has important implications both from an operational standpoint and in terms of evidence preservation.

With regard to the event referred to in the American press as the "Halloween shooting spree," a case study presented by FARO Technologies [16] illustrates how the Colorado Springs Police Department handled a case in which a male individual randomly shot people while walking down the street and was subsequently shot during an exchange of gunfire with police officers. The crime scene in this case was complex, involving both the location where a police officer was shot and two additional locations where three civilians were fatally wounded.

To document the entire crime scene, investigators used the FARO Focus laser scanner. Based on the scans performed at the scene, investigators were able to determine the sequence of events and reconstruct the crime scene.

Investigators from Colorado Springs reported that, prior to the use of the FARO Focus laser scanner, the processing procedure involved photographing the scene as it appeared upon arrival, identifying and marking each piece of evidence, re-photographing the scene with evidence markers in place, and subsequently taking at least two measurements for each trace in order to create a 2D diagram. The disadvantages of this traditional approach included the lengthy processing time, the difficulty of producing an accurate sketch, and the risk of omitting relevant details.

When using the 3D scanning technique, investigators followed these steps: identifying each piece of evidence, re-photographing the scene, and performing five scans in different areas of the location (each scan lasting approximately 11 and a half minutes). The result was that, in less than one hour, the entire intersection where the incident occurred, along with all 55 pieces of evidence, was fully documented.

Upon returning to the office, investigators used the FARO SCENE software to register the scans and generate a dimensionally accurate 3D model. Furthermore, based on this model, an animation was created to accurately represent witness statements and the spatial positioning of the evidence found at the scene. Additionally, by analyzing projectile defects scanned in vehicles and nearby buildings, investigators were able to determine approximate trajectories for several of the shots fired by both the suspect and the officers.

3.2. Reduces exposure to risk during crime scene investigation. Given the technological capabilities available to modern forensic science, crime scene documentation can no longer be limited to traditional methods, particularly in situations involving increased risk for the investigative team. Such contexts require the use of advanced tools that ensure both the accuracy of data capture and the protection of judicial authorities. The ability of 3D scanning technology to generate detailed digital reconstructions and to enable remote documentation represents an effective solution to these challenges, facilitating both evidence preservation and the possibility of conducting subsequent analyses under safe conditions. In this sense, 3D scanning optimizes the documentation process

and fundamentally transforms the approach to crime scene investigation, allowing for the complete recording of spatial configurations within a short time frame and without direct physical presence in high-risk areas.

An illustrative example is the case of the building explosion in Poznań, where a residential block partially collapsed following a detonation, causing significant structural damage, multiple fatalities, and numerous injuries, thus creating an extremely hazardous environment for intervention teams. In this situation, the Polish Police used 3D scanning to rapidly document the aftermath, with the scanner mounted on the arm of a fire truck in order to capture data remotely from the unstable structure. This approach reduced the risk for investigators while ensuring comprehensive documentation of the crime scene [15, p.32-39].

In the context of 3D scanning usage, it has been noted [15] that the internal procedures of the Polish Police include provisions that significantly simplify the process of conducting crime scene investigations.

3D scanning technology has also been employed to support investigators in Ukraine in documenting crime scenes associated with offenses committed during the ongoing conflict with the Russian Federation. These activities were facilitated through the establishment of a Joint Investigation Team (JIT). Using 3D scanners provided by the Polish Police, multiple crime scenes across different regions of Ukraine were documented. The cited source [15, p.32-39] highlights that 3D scanners proved particularly useful in documenting the aftermath of missile attacks, capturing scattered fragments, structural damage, and essential spatial relationships necessary for reconstructing events, with a high level of accuracy.

Beyond the ability to collect information without direct physical contact, the use of this technology significantly reduces the time investigators spend in high-risk environments, thereby minimizing exposure to danger. Ukrainian prosecutors and police officers have emphasized the reliability and efficiency of the technology, noting its capacity to function effectively under extreme conditions and to enable the safe collection of evidence even in locations characterized by extensive debris and severe structural destruction.

The use of 3D scanning in the documentation of war crimes allows for the recording of hard-to-access areas and large surfaces in a rapid and highly precise manner, from multiple angles. Additionally, it provides the benefit of obtaining accurate coordinates for each captured point, which is particularly useful for subsequent reconstructions. For instance, in the case of a missile attack, where fragments are dispersed over a wide area, these elements must be reassembled into a coherent whole in order to determine the type of missile used, its technical characteristics, trajectory, and other relevant circumstances for the investigation [9, p.22-33].

3.3. The Possibility of Virtually Revisiting the Crime Scene. As previously shown, the data obtained through 3D scanning are processed using dedicated software and materialized in the form of a virtual model. This provides the possibility of revisiting the scene at a later stage for additional analyses whenever necessary [15]. As a rule, crime scene investigation has an irreproducible character, governed by the principle that inherent changes caused by the intervention of judicial authorities, environmental factors, or the passage of time make it impossible to recreate the original conditions. From this perspective, 3D scanning becomes a tool for the digital preservation of reality, enabling the virtual storage of the initial state of the crime scene in a format that allows for subsequent measurements and examinations without requiring physical presence at the scene.

Moreover, the possibility of revisiting the crime scene enables the identification and exploitation of traces or details that were not initially considered relevant [12]. As the investigation progresses and new information emerges, certain elements that initially appeared insignificant may acquire essential evidentiary value. In such situations, 3D scanning allows for a retrospective reassessment of the crime scene, in light of newly formulated hypotheses.

As previously discussed, traditional documentation methods inevitably involve a certain degree of subjective selection. In contrast, 3D scanning enables comprehensive and non-discriminatory recording, reducing the risk of omitting relevant elements and reinforcing the objective character of crime scene investigation.

Last but not least, the possibility of virtually revisiting the crime scene as it was initially documented facilitates activities such as forensic examinations, reconstructions, and the presentation of evidence in court, providing a visual support that complements traditional methods.

3.4. Unfavorable Environmental Conditions May Affect Scanning Quality. LiDAR technology is vulnerable to environmental factors and weather conditions that can significantly influence the performance of scanning systems. Phenomena such as rain, fog, or the presence of dust particles in the atmosphere may cause the scattering or absorption of laser pulses, leading to a reduction in both the operational range and the accuracy of measurements. In such situations, LiDAR systems may encounter difficulties in correctly detecting objects and in generating reliable datasets.

To mitigate these limitations, various technical solutions have been developed and implemented, including the use of adaptive algorithms, the integration of multi-wavelength systems, and the application of signal polarization-based methods. Additionally, calibration procedures and compensation mechanisms are employed to correct atmospheric influences and improve measurement accuracy [13, p.164-172].

Although, compared to photogrammetry, LiDAR-based systems are less dependent on ambient lighting conditions and are capable of functioning effectively even in the absence of natural light, their performance may still be affected by the optical properties of the investigated surfaces. For instance, scanning extremely dark or highly reflective surfaces may result in reduced data quality and accuracy, or even in the loss of relevant information [10].

3.5. High Costs. Despite the benefits highlighted in the specialized literature, one of the main obstacles to the widespread adoption of 3D scanning technologies in the forensic field is the high cost of equipment and associated infrastructure. Acquiring a high-performance scanning system involves a considerable financial effort, which often exceeds the budgetary capacities of law enforcement institutions [12], frequently faced with limited resources and multiple operational priorities. Although these technologies offer clear advantages in terms of accuracy and efficiency in crime scene documentation, the initial investment remains a major restrictive factor. Some sources [12] estimate the cost of a terrestrial LiDAR scanner within a range of approximately 20,000 USD to 70,000 USD, while portable scanners are estimated between 5,000 USD and 18,000 USD. Another source [10] suggests that a reliable unit with medium accuracy and a scanning range of approximately 70 meters may cost around 30,000 EUR.

Even though there are cost differences between various types of equipment, this aspect does not eliminate financial barriers. While portable scanners are generally more affordable than complex terrestrial systems, their acquisition still requires significant financial resources, which are difficult to sustain for many operational units.

As previously mentioned, in order to fully exploit their potential, the data collected through 3D scanning must be processed using specialized software. Therefore, beyond the cost of the hardware itself, substantial investments are also required for dedicated software, personnel training, equipment maintenance, and technological updates. These components contribute to increasing the total cost of ownership, making the implementation of 3D scanning a financially complex endeavor.

IV. Results obtained. The obtained results highlight that the integration of 3D scanning technologies into crime scene investigation must be assessed not only from the perspective of their technical advantages, but also in terms of the methodological implications they generate. Although these systems enable detailed documentation and a faithful representation of spatial configurations, they do not eliminate the interpretative dimension of forensic activity. The evidentiary value of the data remains dependent on the manner in which it is captured, processed, and analyzed.

While 3D scanning reduces the subjective selection inherent in traditional methods, the technical decisions involved in its use may still influence the final outcome. Factors such as scan positioning, resolution settings, data filtering, and post-processing choices can shape the resulting model and, implicitly, the conclusions drawn from it.

Moreover, the operational efficiency provided by these technologies must be correlated with the resources required for their implementation. The reduction in on-site intervention time is counterbalanced by the complexity of subsequent processing stages and the need for specialized software applications. This, in turn, requires advanced technical competencies and additional investments, which may limit accessibility and widespread adoption.

Consequently, the results support the view that 3D scanning represents a valuable tool in forensic investigation; however, its effectiveness is contingent upon the manner in which it is integrated into existing forensic methods and techniques. It does not replace the role of the crime scene investigation team, but rather complements and enhances it within a technologically advanced investigative framework.

Conclusions. Following the conducted analysis, it can be concluded that 3D scanning technologies represent a relevant instrument in the process of modernizing crime scene investigation, contributing to increased precision and to the efficiency of documentation activities. These technologies enable detailed and durable recording of the entire crime scene, facilitating both subsequent analysis and the effective use of traces within the criminal process.

However, the effectiveness of these technologies is conditioned by several factors, including the availability of technical and financial resources, the level of professional training of specialists, and the existence of standardized procedures for their use. In the absence of these elements, there is a risk that the full potential of the technology may not be properly exploited.

Consequently, the integration of 3D scanning into forensic practice should be carried out in a balanced manner, as a complementary tool to traditional methods, aimed at ensuring a comprehensive, objective, and reliable evidentiary framework.

Bibliographical references

1. Stancu E. Tratat de criminalistică. Ediția a VI-a revăzută. București: Universul Juridic, 2015, p.357.
2. Franț E.A. Criminalistică. Curs universitar. București: Universul Juridic, 2023, 236 p.
3. Alămoreanu S. Elemente de criminalistică. Cluj-Napoca: Editura Alma Mater, 2000, p.160.

4. Ciobanu P., Stancu E. Criminalistică. Tactica criminalistică. București: Universul Juridic, 2017, p.9.
5. Suciu C. Criminalistică. București: Editura Didactică și Pedagogică, 1972, p.509.
6. Duvac C. Criminalistica. București: Editura Hamangiu, 2024, p.184.
7. Grofu N. Criminalistică. Tactică. Curs universitar, București: Editura Didactică și Pedagogică S.A., 2019, p.11-12.
8. Galanakis G. ș.a. A Study of 3D Digitisation Modalities for Crime Scene Investigation. In: "Forensic Sciences 1", 2021, No.2, p.56-85.
9. Antoshchuk' A., Patyk L., Patyk A. Problematic aspects of using 3D scanners during the examination of war crime sites. In: Law Journal of the National Academy of Internal Affairs, 2025, Vol.15, No.2, p.22-33.
10. Sheshtar F.M., Alhatlani W.M., Moulden M., Kim J.H. Comparative Analysis of LiDAR and Photogrammetry for 3D Crime Scene Reconstruction. In: Applied Sciences, 2025, No.15, 1085. Available: https://doi.org/10.3390/app15031085.
11. Antoshchuk' A., Patyk L., Patyk A. Problematic aspects of using 3D scanners during the examination of war crime sites. In: Law Journal of the National Academy of Internal Affairs, 2025, Vol.15, No.2, p.22-33; apud Azmil, R. ș.a. Transforming Physical Crime Scene into Geospatial-based Point Cloud Data. In: Engineering, Technology & Applied Science Research, 2024, Vol.14, No.3, p.13974-13981. Available: https://doi.org/10.48084/etasr.6888.
12. Tredinnick R., Smith S., Ponto K. A cost-benefit analysis of 3D scanning technology for crime scene investigation. In: Forensic Science International: Reports, 2019, No.1, 100025. Available: https://doi.org/10.1016/j.fsir.2019.100025.
13. Waykar Y.A. LiDAR Technology: A Comprehensive Review and Future Prospects. In: International Journal of Emerging Technologies and Innovative Research, 2022, Vol.9(7), p.164-172.
14. Barazzetti L. ș.a. 3D scanning and imaging for quick documentation of crime and accident scenes. In: Proceedings SPIE, 2012, Vol.8359. 10.1117/12.920728.
15. Kowalczewska K., Nasiłowski M. Polish Insights into Forensic Technology: The Role of 3D Scanners in Crime Scene Investigations and International Criminal Justice. In: Forensic Science, 2025, No.1, p.32-39.
16. https://www.faro.com/en/Resource-Library/Case-Study/colorado-springs-pd-uses-laser-scanner-to-document-mass-shooting.

CZU: 347.2:004.056 **DOI: https://doi.org/10.5281/zenodo.20845138**

FORMS OF REGULATING DIGITAL ASSETS IN THE CONTEXT OF ENSURING THE SECURITY OF THE DIGITAL ENVIRONMENT OF THE REPUBLIC OF MOLDOVA[1]

Mircea GLADCHI,
PhD, University Lecturer,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-7815-083X

Abstract

The regulation of digital assets in the Republic of Moldova constitutes a strategic pillar for national security, grounded in the harmonization of domestic legislation with international requirements. The current legal framework transforms intangible assets into legally protected entities, a process guided by Directive (UE) 2022/2555 (NIS 2) and the Budapest Convention, which establish global standards for combating cybercrime. This security architecture is consolidated through Law No.48/2023 on Cybersecurity that imposes rigorous control and resilience mechanisms over critical infrastructures and digital services.

The integration of digital assets into the civil circuit is supported by the provisions of the Civil Code of the Republic of Moldova regarding incorporeal assets, while information integrity is guaranteed by Law No.133/2011 on the Protection of Personal Data. Through the Digital Transformation Strategy 2023-2030, the state establishes a supervisory regime aimed at preventing hybrid attacks and protecting informational sovereignty. Thus, the forms of regulation are not merely administrative norms, but genuine defensive shields that ensure a resilient digital environment, capable of supporting innovation without compromising user safety or state stability in the face of contemporary cyber challenges.

Keywords: digital asset, digital content, proprietary right, intellectual property, digital resale.

FORMELE DE REGLEMENTARE A BUNURILOR DIGITALE ÎN CONTEXTUL ASIGURĂRII SECURITĂȚI MEDIULUI DIGITAL AL REPUBLICII MOLDOVA

Abstract

Reglementarea bunurilor digitale în Republica Moldova constituie un pilon strategic pentru securitatea națională, fiind fundamentată pe armonizarea legislației interne cu rigorile internaționale. Cadrul juridic actual transformă activele intangibile în entități protejate legal, proces ghidat de Directiva (UE) 2022/2555 (NIS 2) și Convenția de la Budapesta, care stabilesc standarde globale pentru combaterea criminalității informatice. Această arhitectură de securitate este consolidată prin Legea nr. 48/2023 privind securitatea cibernetică, ce impune mecanisme riguroase de control și reziliență asupra infrastructurilor critice și a serviciilor digitale.

Integrarea bunurilor digitale în circuitul civil este susținută de prevederile Codului Civil al Republicii Moldova privind bunurile incorporale, în timp ce integritatea informațiilor este garantată prin Legea nr. 133/2011 privind protecția datelor cu caracter personal. Prin Strategia de Transformare Digitală 2023-2030, statul instituie un regim de supraveghere ce vizează prevenirea atacurilor hibride și protejarea suveranității informaționale. Astfel, formele de reglementare nu sunt simple norme administrative, ci veritabile scuturi de apărare care asigură un mediu digital rezilient, capabil să susțină inovația fără a compromite siguranța utilizatorilor sau stabilitatea statului în fața provocărilor cibernetice contemporane.

Cuvinte-cheie: bun digital, conținut digital, drept patrimonial, proprietate intelectuală, revânzare digitală.

[1] This publication was produced within the research subprogram "National Security of the Republic of Moldova in the Context of Accession to the European Union: Legal, Political, and Sociological Approaches," code: 01.05.01.

Introduction. In an era of global interconnectivity and reliance on data flows, the Republic of Moldova has embarked on an ambitious path of digital transformation, a process that has required a profound re-evaluation of traditional legal concepts in light of emerging cyber risks. The Reform of the Civil Code of March 1, 2019, marked a turning point by introducing the notions of "digital content" and "digital asset" through Articles 477 and 478. This legislative evolution represents more than a mere administrative necessity; it has become a fundamental condition for guaranteeing national sovereignty and security within a virtual ecosystem increasingly vulnerable to hybrid attacks.

The central issue lies in the transformation of intangible assets into legally protected entities, turning the "digital asset" from a simple line of code into an object of law that requires active security mechanisms. In the context of digital environment security, the regulation of these assets acts as a shield protecting data integrity and critical infrastructure. A secure digital environment cannot be limited to technical solutions alone; it requires a legal foundation that clearly defines responsibilities regarding digital possession and access control, thereby preventing cyber espionage and digital identity theft.

From this perspective, digital security is not merely a technical attribute, but an obligatory premise for the validity of any digital asset. Without a regulatory framework ensuring the resilience of these "quasi-things," users and state institutions remain exposed to risks that can paralyze the functioning of electronic government services and erode citizens' trust in the virtual space. Thus, the present article analyzes how current forms of regulation manage to balance the need for the free circulation of goods with the imperative of maintaining a secure and sovereign digital environment for the Republic of Moldova.

Methods and materials applied. The methodology applied in this research is based on a multidisciplinary approach, combining doctrinal legal analysis with the comparative method to highlight the convergence between national legislation and international security standards. The core of the analysis is the regulatory framework of the Republic of Moldova, specifically examining the amendments introduced by the 2019 Civil Code Reform, particularly Articles 455, 477, and 478, which define the legal regime of "digital assets" and "digital content". To understand the protective dimension of these assets, the study integrates the provisions of Law No.48/2023 on Cybersecurity and Law No.133/2011 on the Protection of Personal Data, as these are essential for ensuring the resilience of the digital environment.

At a comparative level, the materials applied include external sources of inspiration, such as the American RUFADA model (Revised Uniform Fiduciary Access to Digital Assets Act), which served as a benchmark for regulating access to digital assets in cases of incapacity or death. Furthermore, European strategic documents are analyzed, such as Directive (EU) 2022/2555 (NIS 2) and the Budapest Convention on Cybercrime, which outline the coordinates for digital asset security at a regional level. The practical dimension of the research is supported by the analysis of European case law, with a central focus on the French case regarding the Steam platform, which provides a perspective on the recognition of digital assets as objects of property subject to free circulation.

Discussions and results obtained. The alignment of the regulatory framework regarding digital assets with the rigors of Law No.48/2023 on Cybersecurity [1] represents a fundamental shift from a static view based on property rights to a dynamic one focused on the resilience of the Republic of Moldova's information infrastructure. While the Civil Code provides, through Articles 477 and 478, the patrimonial foundation of digital assets, Law No.48/2023 establishes the defense mechanisms that transform these assets into

secure and audited entities.

This alignment is primarily visible through Art. 3 of Law No.48/2023, which extends the understanding of a digital asset beyond mere content, integrating it into the concept of "network and information system security". Consequently, the integrity and availability of digital assets are no longer just the private interests of the holder but have become national security objectives. In this regard, Art. 7 imposes rigorous cyber risk management obligations on entities managing such assets, requiring technical and organizational measures proportionate to the identified risk. This means that the regulation of digital assets is no longer limited to defining possession but imposes an active protection regime intended to prevent data compromise.

A vital pillar of this alignment is Art. 12, which introduces the cybersecurity audit. For the Republic of Moldova, this implies that digital assets with major social or economic impact can no longer exist in a verification vacuum; they must undergo periodic evaluations to confirm that the "legal garment" provided by civil legislation is reinforced by a resistant "technical armor". Furthermore, according to Art. 13, the use of European and international certification standards becomes an indirect form of regulating the quality and safety of digital assets, ensuring that their circulation in the virtual environment does not create systemic vulnerabilities.

The reporting and cooperation dimension provided for in Art. 15 completes this picture by establishing an obligation to notify significant incidents. This provision correlates directly with the need to protect digital assets against destruction or unauthorized access, transforming security from a technological option into a shared legal responsibility. Through this legislative synergy, the digital asset in the Republic of Moldova ceases to be a mere legal abstraction and becomes a secured asset, capable of supporting the country's digital transformation in a sovereign and resilient manner against hybrid challenges.

The modernization of the regulatory framework of the Republic of Moldova, materialized by the entry into force of the Civil Code Reform on March 1, 2019 [2], marked a turning point in aligning national legislation with the demands of contemporary technological reality. The central pillar of this transformation is the introduction of Article 477, through which the legislator formally recognizes the categories of "digital content" and "digital asset". This legislative innovation is not merely a terminological update but requires a profound re-evaluation of the legal ontology of the notion of "asset". Although Article 455 remains the fundamental reference, preserving the classic definition of an asset as an entity comprising things and proprietary rights, the insertion of the digital dimension forces an inquiry into the nature of these assets: are we witnessing an extension of traditional categories, a special rule with a derogatory character, or the birth of an autonomous legal institution that borrows civilist language to regulate unprecedented immaterial phenomena?

The dilemma is amplified by the accelerated pace of information innovations, which places classic legal qualifications—historically built on tangible objects—in direct conflict with fluid and dematerialized realities. A striking example is the legal status of cryptocurrencies, assets that fluctuate between divergent interpretations depending on the adopted reference system, generating uncertainties not only in legal qualification but also in accounting and tax records, both nationally and internationally. In this context, national legislation seems to propose a hybrid regime, attempting to anchor digital content within a framework of legal certainty by establishing strict criteria for existence.

According to the requirements of Article 477, a "digital asset" is the result of an asymmetric symbiosis between two cumulative elements: the existence of digital content

or an electronic account and, obligatorily, the person's subjective right over them. This legal construction moves away from the disjunctive definition in Article 435 (which distinguishes between a thing or a right), imposing the condition that digital content must always be supported by a subjective right to be qualified as an asset. However, the text of the law leaves room for interpretation regarding the nature of this right—whether it must be strictly proprietary, such as a claim right, or can be non-proprietary, such as access to personal data. This distinction is essential, as using the term "asset" for non-proprietary rights contravenes the civilist tradition that associates an asset with an evaluable economic value.

Furthermore, a careful analysis reveals the need for a clear demarcation between digital assets and intellectual property objects. While copyright manifests over the creation itself, the holder of a digital asset exercises a specific form of control called "digital possession". This does not involve physical appropriation but rather technical control over the digital object.

The pragmatic purpose of these regulations is closely linked to Article 478, inspired by the American RUFADA model (Revised Uniform Fiduciary Access to Digital Assets Act) [3]. RUFADA represents a benchmark American legislative model that served as a source of inspiration for modernizing the Civil Code of the Republic of Moldova. The essence of RUFADA lies in resolving a modern legal conflict between the protection of electronic data privacy and the need for heirs or legal representatives to manage the digital estate of a deceased or incapacitated person.

The analysis of this regulatory framework reveals a strict hierarchical structure regarding consent and access to digital assets. RUFADA establishes that user instructions expressed through online tools provided by platforms (such as "legacy contact" settings) take absolute priority over any other document. In their absence, the will expressed in a testament or other legal acts becomes decisive, and only as a last resort do the service provider's standard terms and conditions apply. This hierarchy was designed to provide fiduciaries—whether executors, administrators, or guardians—the legal authority to manage digital assets, such as online bank accounts, cryptocurrencies, or documents stored in the cloud, without violating federal computer fraud laws.

In the context of our discussion, RUFADA brings an essential clarification to the distinction between the "catalogue of electronic communications" (metadata, such as sender and date) and the "content of communications" (the text of the messages). While access to the catalogue is more easily permitted to the fiduciary to identify assets, access to the actual content requires explicit user consent, thus protecting post-mortem privacy. This approach demonstrates that, in the vision of RUFADA, a digital asset is not treated as a simple material object that can be physically taken, but as an extension of the right to privacy that requires a specialized access regime.

Although the American model has a limited scope, focused on third-party access to digital assets in case of death or incapacity, Moldovan legislation uses this foundation to propose a "non-competitive" approach to traditional classifications. Thus, a clear distinction is made: if digital content is provided on a material medium (such as a CD), it remains subject to the rules of corporeal assets according to Article 455 para. (2). In contrast, pure digital assets tend to naturally fall into the category of incorporeal assets.

Looking ahead, an express classification of assets into corporeal and incorporeal, with the explicit integration of digital assets into the latter category, could eliminate current ambiguities. By recognizing the proprietary or sentimental value of digital content, civil law can provide a coherent legal regime where the existence of the content itself

justifies the status of an incorporeal asset, thereby facilitating the secure integration of these assets into modern civil relations.

This perspective suggests that the legislator's primary intention through the amendments to the Civil Code was to extract digital objects from a normative vacuum and provide them with a formal "legal garment", placing them under the protective umbrella of assets and patrimony. Their official recognition is not just a stage of nomenclature but a deliberate attempt to grant them legal guarantees through fundamental institutions, including property rights. However, this legislative ambition faces an insurmountable dogmatic barrier: the immaterial nature of these assets makes it impossible to manifest the attribute of possession in its classic, material sense, which legally excludes their qualification as objects of traditional property.

This discrepancy between the desire for protection and the technical reality of the assets can generate more practical difficulties than legal solutions. Although the legislator accepts the existence of these "quasi-things" through Articles 477 and 478, it fails to base them on detailed and specific regulation, as is the case with intellectual property, where special norms precisely define limits and defense mechanisms. In the absence of special legislation detailing the digital regime, the legal space remains vulnerable to dangerous precedents [4].

The major risk lies in the forced attempt by judicial practice to transfer statutes and rules specific to established institutions onto entities that cannot organically assimilate them. Such an approach risks damaging the purity of theoretical concepts and compromising the full applicability of the respective institutions. Essentially, digital assets remain "quasi-things"—entities that, while having value and utility, lack the constitutive elements of a "thing" in its physical sense, thus requiring a dedicated legal architecture that does not force counterproductive analogies with classic property rights.

The analysis of the legal regime of digital assets in the Republic of Moldova reveals an ambitious attempt by the legislator to provide these virtual entities with a "legal garment" under the cover of traditional asset and patrimony institutions. Through the formal recognition of these assets, the aim was to confer specific forms of protection, sometimes even attempting to relate them to property rights. However, this approach faces a major conceptual barrier, as digital assets cannot be objects of property rights in the classic sense due to the impossibility of manifesting physical possession. This situation risks generating more problems than solutions, as the acceptance of these "quasi-things" in the Civil Code is not mirrored by detailed regulation, as seen in intellectual property. While intellectual creations benefit from special laws defining their limits, digital assets remain in a zone of normative ambiguity that can create dangerous precedents. The main risk lies in the forced attempt to assign them incompatible legal statutes, which damages fundamental theoretical concepts and creates major difficulties in the full applicability of legal institutions for these entities that lack the necessary elements to be considered "things".

This fragility of the civil framework is partially remedied by the process of alignment with Law No.48/2023 on Cybersecurity and by harmonization with the European NIS 2 Directive, which transforms the digital asset from a simple patrimonial unit into an asset requiring active resilience. Thus, the protection of the digital asset migrates from the sphere of physical possession to that of risk management and security auditing, providing practical substance to the concept of technical control.

In conclusion, the regulation of digital assets in the Republic of Moldova is in a state of hybrid transition, where their recognition as autonomous incorporeal assets is the only way to avoid confusion with intellectual or classic property. It is imperative that legisla-

tion evolves toward a dedicated structure that recognizes the specificity of these "quasi-things" and ensures their integrity through a synergy between private law and strict cybersecurity standards, thereby guaranteeing real protection of the digital estate in an increasingly interconnected society. We are witnessing the shaping of a digital patrimony attributed to both natural and legal persons under private law, including those under public law.

The harmonization of Moldovan legislation with Directive (EU) 2022/2555 (NIS 2) [5] represents a qualitative leap from defensive security to a proactive resilience strategy, redefining digital assets not just as objects of private patrimony but as critical resources for state stability. By means of Law No.48/2023, the Republic of Moldova transposes the core pillars of NIS 2, imposing a supervisory and risk management regime that directly targets the integrity, availability, and confidentiality of digital assets. Directive (EU) 2022/2555 represents the new European standard of excellence in cybersecurity, designed to replace the old regulatory framework with a much more rigorous strategy adapted to modern hybrid threats. The transposition of NIS 2 through Law No.48/2023 marks the transition from symbolic legal protection to mandatory technical protection, imposing a common high level of security across the Union and, by extension, in partner states in the process of alignment.

The essence of this directive lies in the massive expansion of its scope, eliminating ambiguities by classifying entities into two critical categories: essential (such as those in energy, transport, health, or digital infrastructure) and important (such as postal services, waste management, or chemical manufacturing). This classification is crucial because digital assets managed by these entities cease to be simple elements of private patrimony and become components of critical infrastructure, whose integrity is vital for the functioning of society. The NIS 2 Directive imposes strict risk management measures on these organizations, including risk analysis policies, supply chain security, the use of cryptography, and business continuity plans in case of crisis.

Another fundamental pillar of the directive is the significant incident reporting mechanism, which obliges entities to notify competent authorities within a maximum of 24 hours of detecting a serious threat. This forced transparency ensures a rapid response at the national and European levels, preventing the propagation of cyberattacks. Additionally, NIS 2 introduces the personal responsibility of the entities' management bodies, meaning that an organization's management can be held liable for non-compliance with cybersecurity obligations.

A primary dimension of this harmonization lies in the expansion of the scope and the rigorous classification of entities managing digital assets. In the spirit of NIS 2, national legislation distinguishes between essential and important entities, a classification that transforms the legal regime of digital assets according to their systemic impact. If a digital asset, regulated under civil law by Art. 477 Civil Code, is part of the infrastructure of an essential entity (e.g., energy, health, digital infrastructure), it is subject to much more severe security requirements. This approach eliminates legal fragmentation and ensures that critical digital assets are protected uniformly, regardless of their public or private nature.

In terms of risk management, harmonization with NIS 2 introduces the obligation to secure the entire supply chain. This means that the regulation of digital assets no longer stops at the final holder but extends to digital service providers. According to the European norms adopted nationally, entities are obliged to assess the vulnerabilities of every digital asset purchased or used. The result is the transformation of the digital asset from an isolated entity into an interconnected element, whose legal validity is conditioned by

technical compliance and "security by design".

Furthermore, the incident reporting mechanism, a central pillar of the NIS 2 Directive, redefines the protection of digital assets in the event of security breaches. The obligation to notify significant incidents to the Cybersecurity Agency (ASC) within strict deadlines (24/72 hours) ensures that any attack on a digital asset is monitored at the state level. This forced transparency protects not only the individual asset but also prevents a domino effect across the entire digital ecosystem of the Republic of Moldova.

Conclusions. The evolution of the legal regime of digital assets in the Republic of Moldova represents a complex process of transition, marked by the effort to reconcile classic concepts of civil law with the technological realities of the 21st century. This normative architecture, initiated by the Civil Code Reform of March 1, 2019, attempted to provide a "legal garment" to immaterial entities that, until recently, existed in a legislative vacuum. Through Articles 477 and 478, the legislator extracted digital content and electronic accounts from the zone of uncertainty, placing them under the umbrella of patrimony and assets; however, this integration has generated a series of doctrinal and practical challenges that require a multidimensional analysis.

The core of this regulation lies in defining the digital asset as an obligatory symbiosis between immaterial content and an associated subjective right. This legal construction departs from the traditional vision of Article 455, imposing a cumulative condition that, while offering symbolic clarity, leaves unresolved ambiguities regarding the nature of the right—whether proprietary or non-proprietary. Furthermore, digital assets are identified as "quasi-things", entities that possess utility and value but lack the materiality necessary to be objects of property rights in the classic sense. The impossibility of manifesting the attribute of physical possession creates a conflict with the institution of property, risking the deterioration of fundamental theoretical concepts if one attempts to force analogies between technical control (codes, access keys) and the actual possession of a corporeal thing.

This civilist basis, although essential, has proven insufficient in the absence of detailed regulations similar to those in the field of intellectual property. The lack of special laws detailing the protection mechanisms for these "quasi-things" creates a risk of dangerous precedents in practice, where digital assets might be assigned statuses incompatible with their fluid nature. However, this protective void is partially compensated by the new dimension of digital security. Alignment with Law No.48/2023 on Cybersecurity and harmonization with the European NIS 2 Directive mark the transition from a static protection of property rights to an active resilience strategy. The digital asset ceases to be merely a unit of private patrimony and becomes a strategic asset whose existence is conditioned by information system security, risk management, and periodic auditing.

In conclusion, the legal regime of digital assets in the Republic of Moldova is currently in a hybrid paradigm, where civil law provides the foundation for patrimonial recognition, and cybersecurity legislation provides the practical defense mechanisms. To ensure full and coherent applicability, a doctrinal re-evaluation is imperative to definitively anchor these assets in the category of incorporeal assets, detaching them from the constraints of classic property. The future of this regulatory framework depends on the ability to develop a dedicated legal architecture that does not force the adaptation of digital assets to old institutions but creates new forms of protection based on secure technical control and shared responsibility. Only through a synergy between the rigor of the Civil Code and the dynamism of cybersecurity standards can the Republic of Moldova guarantee a sovereign digital environment capable of protecting the economic and sentimental value of its

citizens' virtual assets in the face of global challenges.

Bibliographical references

1. Legea nr.48 din 16.03.2023 privind securitatea cibernetică. În: Monitorul Oficial nr.151-153 din 28.04.2023, art. 225.
2. Codul Civil al Republicii Moldova nr.1107 din 06.06.2002. În: Monitorul Oficial nr.66-75 din 01.03.2019, art. 132.
3. Revised Uniform Fiduciary Access to Digital Assets Act. Available: https://www.uniformlaws.org/viewdocument/final-act-with-comments-40?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecdf22&tab=librarydocuments (accessed 14.04.2026).
4. GLADCHI Mircea. Obiectul dreptului de proprietate în sistemele de drept Europene - abordările categoriei de quasi-lucruri (The object of property right regulation in European legal systems – approaches on the quasi-things category). În: Analele Ştiinţifice ale Academiei „Ştefan cel Mare" a MAI, 2021, ed.13, pp.246-258.
5. Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No.910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive). Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2555 (accessed 14.04.2026).

CZU 343.224.1 DOI: https://doi.org/10.5281/zenodo.20845195

MODELS OF CRIMINAL SANCTIONS FOR MINORS

Valentina RUSSU,
PhD Candidate, University Assistant,
Department of Criminal Law and Criminology,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID 0000-0002-1809-9745

Abstract

The institution of criminal sanctioning of minors is today one of the most sensitive areas of criminal law, considering, on the one hand, the need for an effective state response to the criminal act committed and, on the other hand, the obligation to treat the minor as a developing person who needs protection, care and social reintegration when he or she comes into contact with the justice system.

The issue of criminal liability and criminal sanctioning of minors remains highly topical, as demonstrated by the new requirements of juvenile justice and by the increased attention that the international community gives to the consolidation of criminal policies in relation to juvenile offenders. In this scientific paper we highlight several models of criminal response to juvenile crime: the repressive model, the protectionist model, the restorative model and the mixed model. Each of these models has its own particularities, which we describe through the prism of international regulations and relevant doctrinal interpretations. At the same time, we emphasize the advantages and vulnerabilities of each model, as well as the specific features of the mixed model within the criminal law of the Republic of Moldova.

Keywords: minor, model of criminal sanctioning, sanction, criminal penalty, coercive educational measures, resocialization.

MODELE DE SANCȚIONARE PENALĂ A PERSOANELOR MINORE

Abstract

Instituția sancționării penale a persoanelor minore reprezintă astăzi una dintre cele mai sensibile zone ale dreptului penal, având în vedere, pe de o parte, necesitatea unei reacții eficiente a statului față de fapta infracțională săvârșită, iar pe de altă parte, obligația de a trata minorul ca persoană aflată în dezvoltare, care are nevoie de protecție, grijă și reintegrare socială atunci când acesta nimerește în contact cu sistemul de justiție.

Problematica răspunderii și sancționării penale a minorilor rămâne una destul de actuală, fapt demonstrat de noile exigențe ale justiției juvenile, dar și de atenția sporită pe care comunitatea internațională o oferă consolidării politicilor penale în raport cu minorii delincvenți. În această lucrare științifică evidențiem câteva modele de reacție penală la criminalitatea minorilor: modelul represiv, modelul protecționist, modelul restaurativ și modelul mixt. Fiecare dintre aceste modele are propriile sale particularități, pe care le descriem prin prisma reglementărilor internaționale și a interpretărilor doctrinare relevante. Totodată, scoatem în evidență avantajele și vulnerabilitățile fiecărui model, dar și accentuăm trăsăturile specifice ale modelului mixt în cadrul dreptului penal al Republicii Moldova.

Cuvinte-cheie: minor, model de sancționare penală, sancțiune, pedeapsă penală, măsuri de constrângere cu caracter educativ, resocializare.

Introduction. In the case of minors, the coercive function of the criminal sanction can no longer be understood in its traditional meaning, specific to criminal law applicable to adults, namely as a predominant expression of state coercion exercised for the purpose

of repressing criminal conduct. Within juvenile justice, coercion must be adapted to the particularities of age, the level of intellectual and psychological development, as well as to the increased possibility of shaping the minor's behavior. Thus, in relation to a minor, the coercive function must be subordinated to a formative purpose, avoiding the transformation of the sanction into a mere instrument of intimidation or social exclusion.

Methods and materials applied. For the purpose of preparing this scientific investigation, we used several research methods, including the historical method, the comparative method, the systematic method, logical-rational analysis and others. At the same time, the paper focuses on the analysis of national and international regulations concerning the subject addressed, as well as relevant scientific works from our country and from other states.

Discussions and results obtained. When analyzing international documents on the criminal liability of minors, we observe that, at international level, the criminal response to minors who have committed offences must be adapted to their specific needs, their age and the objective of their social reintegration. Article 40 of the Convention on the Rights of the Child expressly enshrines the obligation of States Parties to recognize "the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" [1]. It is precisely for these reasons that a profound rethinking of the concept of criminal sanction applicable to minors is required.

Below we shall analyze several approaches to the term criminal sanction, which, in general, includes penalties and coercive measures. Some authors describe the term "sanction" as a consequence of criminal liability. For example, as Romanian professor C. Bulai argues, "the offence as an act prohibited by criminal law cannot be conceived without the inevitable consequence that is criminal liability, and this, in turn, would be devoid of object without the criminal sanction, without punishment. Conversely, punishment cannot be conceived without the existence of criminal liability, and the latter can have no legal basis other than the offence" [2, p.312]. Other authors, defining criminal sanctions, show that they "are measures of coercion and re-education, provided by criminal law (penalties, educational measures and security measures), applied to persons who have committed acts incriminated by it, for the purpose of preventing the commission of such new acts through the re-education of offenders" [3, p.77].

Usually, the consequence of committing an offence implies the application of a penalty, but it cannot be said that this is the only criminal consequence, especially in the case of minors. This idea is also supported by doctrinal interpretations which show that "educational measures may also be applied to minors or, together with the penalty or educational measure, or even in their absence, security measures may be ordered or criminal liability may be replaced by liability that entails the application of an administrative sanction" [4, p.221]. Therefore, we reiterate that criminal penalties alone, as measures of state coercion applied to persons who have committed offences, cannot fully and independently guarantee effective criminal-law protection, especially in the case of minors. Thus, in the theory of criminal law, the role of security measures is increasingly emphasized. As the author F. Antolisei also states, "the fight against offences could not be effective if criminal-law sanctions were limited only to penalties; often the acts provided by criminal law reveal certain human or social realities which, if not counteracted, may determine the

commission of other acts provided by criminal law. These realities, considered 'states of danger', are distinct from the social danger presented by acts provided by criminal law and cannot be counteracted by penalties, because they arise from realities that are not susceptible to being influenced by penalties: the removal of these states of danger could be achieved only through preventive measures – security measures" [5, p.714].

The need to establish a mixed system of criminal sanctioning, in the sense of regulating penalties and security measures, is also highlighted by A. Posdarie, according to whom the system of criminal-law reaction is no longer "a system of single, exclusivist reaction (either only penalties – the classical school, or only preventive measures – the positivist school), but a unitary system in the sense of merging penalties with security measures into a unitary instrument for combating the phenomenon of criminality" [6, p.15].

Considering the age-related particularities and the specific development of minors, it is imperative that they benefit from a sanctioning regime distinct from that of adults. Thus, we agree with the opinions of legal scholars who argue that "criminal law and the criminal statute cannot view from the same angle these activities (offences) committed by minors and treat them as those committed by adults. This is required both from the point of view of the degree of social danger of the acts and with regard to the means of legal coercion necessary for sanctioning offenders" [7, p.217]. We also agree with other opinions invoked by the same authors, according to which "when related to the age and living conditions of minors in general, the acts committed by them naturally present a less serious degree of social danger than those committed by adults. This objective finding empirically leads to the conclusion that the problem of juvenile offenders could be solved through a corresponding mitigation of criminal coercive measures in the case of acts committed by minors" [7, p.217].

Further, referring specifically to the models of criminal sanctioning of minors, we note that the study of legislation and doctrine allows us to identify several models that may conventionally be classified as follows:

- The repressive or retributive model;
- The protectionist or welfare model;
- The restorative model; and
- The mixed or integrative model.

These models represent the expression of distinct conceptions regarding the specificity of the criminal liability of minors, the purposes of the state's response to criminal acts committed by minors, and the reciprocal link between the act and the personality of the perpetrator. At the same time, these models often coexist within the same legal system and are not applied in isolation; however, one of them tends to become dominant and is placed at the basis of criminal policy regarding minors. The standards of the United Nations and of the Council of Europe support mixed models of criminal sanctioning of minors, the emphasis being placed on the educational and restorative purpose of the sanction, while detention is applied only in exceptional situations and for the minimum necessary period, as a measure of last resort.

In describing the specific features of each model, we note that the repressive model, also called in doctrine the retributive model, is based on the idea that the criminal sanction must represent, first and foremost, a proportional response of the state to the seriousness of the act committed. Thus, this model focuses on the offence, on its degree of dangerousness and on the need to reaffirm the authority and imperative nature of the criminal norm. Within this system of social reaction, the minor is treated primarily as the

author of a violation of the legal order, and his or her age-related particularities are relevant mainly for mitigating the sanctioning regime, but not for fundamentally changing the nature of the criminal response. At the same time, this model is specific to systems in which juvenile justice is closely aligned with the justice applicable to adults. In these systems, differences in legal regime often consist only in the reduction of penalty limits or in the existence of special procedures, without the purpose of the sanction truly moving away from the classical essence of punishment.

In some research, this model is also called the authoritarian or traditional model and is described in contrast to the liberal model, meaning that within the authoritarian model "juvenile offenders who are criminally liable are subject to criminal sanctions, whereas the liberal model indicates that the criminal regime will not be applied in this case, and minors will be subject only to measures of another nature" [8, p.107].

The apparent advantage of the repressive model lies in the clarity and firmness of the legal response, as well as in the emphasis placed on individual responsibility. Nevertheless, its limits are significant. It does not sufficiently value the realities of the minor's psychological development or his or her increased vulnerability to family, social and peer-group influences. In addition, the early application of severe sanctions may intensify stigmatization and compromise the very objective of preventing recidivism. Contemporary juvenile justice standards have moved beyond this paradigm, as they promote the idea that a child in conflict with criminal law must be treated in a manner compatible with his or her dignity, age and the objective of social reintegration, considering that his or her physical and psychological development justifies diminished culpability and, consequently, differentiated legal treatment. The same reasoning can be derived from the European Rules for juvenile offenders subject to sanctions or measures, which provide that "the imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality), and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualization), as ascertained when necessary by psychological, psychiatric or social inquiry reports" [9].

General Comment No.24 (2019) of the UN Committee on the Rights of the Child also emphasizes that "the physical and psychological development of children differs from that of adults. Such differences constitute the basis for the recognition of a lower degree of culpability and for the establishment of a separate system with a differentiated and individualized approach. It has been demonstrated that exposure to the criminal justice system causes harm to children, limiting their chances of becoming responsible adults" [10]. At the same time, the document recommends that States develop extrajudicial measures and make use of alternatives to detention, which contradicts the foundations of an exclusively punitive paradigm. Consequently, although the repressive model has not completely disappeared from comparative law, it can no longer legitimately constitute the main axis of the criminal sanctioning of minors.

The second model – the protectionist or welfare model – unlike the repressive model, is based on the idea that the minor who has committed an offence must be approached by taking into account his or her psychosocial development particularities and the environmental conditions that favored the criminal behavior. Therefore, this model focuses not exclusively on the act committed, but on the minor's personality, family environment and social groups, as well as on his or her prospects for resocialization. The protectionist model is based on the idea that juvenile delinquency cannot be effectively addressed only through criminal coercive means, considering that it often represents the expression of

deficiencies in socialization, harmful family environments, economic vulnerability or a lack of educational or emotional support. Thus, the state's response must be primarily focused on education and assistance. Moreover, intervention measures regarding the minor must constitute instruments of formation, supervision, counseling, psychological support, school and vocational guidance, and must not be strictly limited to the application of sanctioning means.

Such a model may also be derived from the analysis of international standards, since the Beijing Rules proclaim as a principle the obligation of Member States, in accordance with their general interests, "to promote the well-being of the juvenile and his or her family" [11]. At the same time, the system of administration of juvenile justice must be designed so as to respond to the different needs of minors and protect their fundamental rights. The Riyadh Guidelines also emphasize the welfare of the minor, the broad use of preventive measures and the avoidance, as far as possible, of the minor's interaction with the justice system. According to the document, "a child-centered orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered mere objects of socialization or control" [12]. At the same time, it is necessary to understand that "labeling a young person as 'deviant', 'delinquent' or 'pre-delinquent' often contributes to the development of a consistent pattern of undesirable behavior by young persons" [12].

Some research shows that the protectionist model is based on a positivist approach, in the sense that "the juvenile's unlawful behavior is the product of social or environmental factors for which he or she cannot be individually responsible. Consequently, the main purpose of the youth justice system is to provide offenders with appropriate support or treatment, rather than to punish them. Moreover, young people who are vulnerable or in difficulty are considered to need protection against the potentially harmful and corrupting influences of the adult world, including the adult criminal justice system. As a result, the main emphasis is placed on the needs and best interests of the child, rather than on the acts he or she may have committed" [13, p.3].

As a characteristic of the protectionist approach, we also highlight the broad involvement of various experts in the social sciences, such as social workers, psychologists, psychiatrists and specialists trained in pedagogy, either as decision-makers in their own right or, more frequently, as advisers and authors of reports intended to support judges. Another characteristic invoked by James Dignan in his studies is that "decision-makers are granted broad discretion when establishing and ensuring the best interests of the child. This often involves recourse to custody (or, at least, compulsory removal from the family environment), both for diagnostic purposes and to remove the child from a harmful environment. There is also an obvious preference for judicial decisions and measures that are flexible, individualized and open-ended or indeterminate in duration. Such measures, in turn, have the effect of conferring upon the practitioners responsible for their implementation a broad discretionary power over the life of the young person" [13, p.4]. However, we consider that the protectionist model is not an ideal one, since an excessively protective approach may lead to the diminished importance of procedural guarantees and to the justification of overly broad interference in the minor's life under the pretext of his or her "good". Therefore, the application of this model must be accompanied by strict respect for the principle of legality, proportionality and effective judicial control. At the same time, the best interests of the child cannot serve as an argument for arbitrariness; it must be integrated into a clear and predictable legal framework.

Another model – the restorative model – constitutes one of the most important

innovations of contemporary criminal policy and has particular relevance in the field of minors. This model distances itself both from strictly repressive logic and from exclusively protectionist logic, placing at the basis of the legal response the idea of repairing harm and reconstructing the social relationships harmed or endangered by the commission of the offence. Within this model, the minor is not only the recipient of a sanction or educational intervention, but an active participant in the process of assuming responsibility and remedying the consequences of the act.

From the analysis of various doctrinal interpretations, we identify several basic principles on which the restorative model is based, namely that society's response to criminal acts committed by minors should not be limited to punishment, but should primarily pursue the repair of harm, the assumption of responsibility by the minor, the involvement of the victim and the social reintegration of the child. At the same time, some research shows that "restorative justice offers a very different way of understanding and responding to crime. Instead of considering the state as the primary victim of criminal acts and placing the victim, offender and community in passive roles, restorative justice recognizes that crime is directed against concrete persons. It is based on the belief that those most affected by the offence must have the opportunity to be actively involved in resolving the conflict. Repairing harm and restoring losses, providing the offender with the opportunity to assume direct responsibility for his or her actions, and supporting the victim in overcoming vulnerability and reaching a certain degree of emotional closure stand in clear contrast to the values and practices of the traditional criminal justice system, centered on past criminal conduct and on the application of increasingly higher levels of punishment" [14, p.255].

Regarding the essence of restorative justice within the criminal response to juvenile crime, L. Walgrave states that it "does not consist exclusively in a certain procedural technique, but in the purpose of restoration: the legal response is legitimate insofar as it is primarily oriented toward repairing the harm caused by the offence. This position is important for juvenile justice, because it allows the restorative model to be understood not merely as criminal mediation, but as a genuine philosophy of criminal response applicable to minors, centered on responsibility, reparation and reintegration, not on mere punitive suffering" [15, pp.1-2]. J. Dignan also highlights several characteristics of this model, according to which "in terms of criminal justice policies and procedures, the restorative justice model — like the minimum intervention model — favors diverting a large number, if not the majority, of offenders away from prosecution, as well as strategies aimed at decarceration, since custodial interventions often make it very difficult to achieve restorative outcomes. It is not surprising that the emphasis placed on meeting victims' needs, while promoting offender accountability and welfare, as well as strengthening the active role of victims, offenders and communities, has led to the search for new institutional and procedural mechanisms that are more appropriate and more culturally sensitive" [13, p.10].

Referring to restorative justice practices, A. Bolocan-Holban argues that in the field of justice they may be used in order "to reduce the burden on the criminal justice system, to divert certain cases from judicial proceedings and to establish alternatives to detention, where the law allows and provides ways of resocializing the offender through non-custodial sanctions" [16, p.120]. The author, analyzing criminal policy in the context of the criminal legislation of the Republic of Moldova, emphasized that "one aspect oriented toward restorative justice concerns alternatives to detention. National legislation provides for a series of measures that focus on the person of the perpetrator, offering him

or her legal facilities and the possibility of eventual resocialization" [16, p.120]. At the same time, several principles governing restorative justice were highlighted, including responsibility, reparation, rehabilitation and reintegration.

We further emphasize that among the objectives promoted by international documents on the criminal liability of minors is also "the promotion of key strategies for reducing the particularly harmful effects of contact with the criminal justice system, taking into account increased knowledge regarding the development of minors, in particular the more frequent application of measures to avoid the involvement of minors in formal judicial procedures" [10]. Moreover, General Comment No.24 (2019) on Children's Rights in the child justice system defines the term restorative justice itself, meaning "restorative justice: any process in which the victim, the offender and/or any other individual or member of the community affected by an offence participate together and actively in resolving the matters arising from the offence, often with the help of a fair and impartial third party" [10].

At the international level, during the Twelfth United Nations Congress held in Salvador, Brazil, the importance of valuing the restorative model within juvenile justice was reiterated. Thus, paragraph 51 of the Salvador Declaration emphasizes "the need to reinforce alternatives to imprisonment, which may include community service, restorative justice, electronic monitoring, as well as the need to support rehabilitation and reintegration programmes, including those aimed at correcting criminal conduct, together with educational and vocational programmes for convicted persons" [17].

Although the restorative model has a number of advantages, it should not be idealized. Its effective application depends on the existence of specialized services, trained counselors, a clear procedural framework and the genuine consent of the participants. Moreover, not every act and not every case allows for an adequate restorative intervention. Therefore, restorative justice must be viewed as an essential, but not exclusive, instrument in the architecture of the criminal sanctioning of minors.

The mixed or integrative model is currently the model that dominates most European systems and the normative architecture promoted by international organizations. It starts from the idea that the minor must be held accountable for the act committed, but this liability cannot be materialized through the simple transposition, in attenuated form, of the sanctioning regime applicable to adults. On the contrary, the criminal response must combine elements of legal accountability, protection, education, reintegration and, where appropriate, restoration. Therefore, it presupposes a combination of elements of the educational (protectionist) model and of the repressive model, to which components of minimum intervention or restorative approaches may be added in practice. James Dignan, in a comparative analysis of juvenile justice systems, explicitly emphasizes that the typologies he identified in the work Juvenile Justice Systems: A Comparative Analysis are not "ideal types" and that "real juvenile justice systems do not correspond exclusively to a single model, most of them being influenced by several approaches simultaneously" [13, p.2].

In national legal doctrine, the idea of a mixed model of criminal sanctioning of minors is supported by the recognition of a legal regime in which criminal penalties coexist with educational measures, without excluding criminal liability itself. As already highlighted, some doctrinal studies identify two major models of approach regarding the criminal liability of minors: the liberal model and the authoritarian model. Referring to the authoritarian model, M. Spatari and N. Danelciuc-Colodrovschi identify several modalities of it:

"1. A minor whose age is close to majority may be considered an adult and, conse-

quently, may be subject to penalties provided for adults (the authors consider this incorrect, because a minor cannot be sanctioned to the same extent as an adult);

2. Only penalties are applied to minors, but their duration is reduced compared with those applied to adults;

3. Penalties and/or educational measures (security measures) are applied to minors, that is, a mixed sanctioning regime is involved" [18, p. 76].

Furthermore, the same authors, analyzing the provisions of the criminal laws of various states, identified that "the state of minority has an influence on criminal liability. In this regard, most states provide that a minor under the age of 14 benefits from the absolute and irrebuttable presumption that he or she lacks discernment and, consequently, criminal liability cannot be engaged" [18, p.76]. It is also reiterated that, according to the criminal law of the Republic of Moldova, the age limits of criminal liability are 16 and 14 years, emphasizing that "among the categories of penalties provided in Article 62 of the Criminal Code of the Republic of Moldova for natural persons, the fine, unpaid community work and imprisonment are applicable to minors" [18, p.76], and that minors released from criminal liability or criminal punishment are subject to coercive educational measures provided by law.

Discussing the particularities of criminal punishment applied to minors, D. Popescu maintains that, in the field of minors, the sanction cannot be conceived exclusively in the logic of repression, but must be individualized according to age-related particularities and the corrective-educational purpose. The author shows that punishment "must be adapted so as to take into account the influence of the punishment applied on the correction and re-education of the guilty person, as well as the living conditions of his or her family" [19, p.472]. He also emphasizes that, in the case of the minor, sanctions must take into consideration not only the act, but also the person in formation, showing that "the minority of the person who committed the offence must produce special essential effects in the individualization of criminal liability and punishment" [19, p.472]. It is also necessary to consider that "age is an individual characteristic of the juvenile offender which indicates the level of his or her bio-psycho-social development" [19, p. 472].

Other legal scholars who have addressed the issue of using legal-criminal coercive means against minors also support the need to establish a sanctioning system distinct for minors. For example, I. Casandra argues that "the need to launch and continue efforts to reduce the degree of liability and sanctioning of acts committed by minors is not denied, but in no way under the aspect of reducing the degree of social danger of the offence committed by them. All these reasons indicate the need to differentiate the sanctioning regime of juvenile offenders from that provided and intended for adult offenders" [8, p.106]. At the same time, we agree with the same authors that "not only differentiated sanctioning treatment is necessary, but also the individualization of criminal liability based on the age of the active subject of the offence. This latter aspect may be promoted for each offence individually or for certain categories of offences, depending on how they are classified in criminal law" [8, p.106].

From the corroboration of various doctrinal opinions, we may conclude that the mixed model is understood as a formula of balance between the requirements of criminal liability and the need for differentiated treatment of the minor. In other words, the minor remains a subject of criminal liability, but the legal response to his or her act is structured by combining penalties with educational measures and through a pronounced individualization oriented toward correction, re-education and social reintegration. This orientation is also confirmed by the observation that the list of educational measures provided

by law is exhaustive, the court being unable to apply measures other than those expressly provided by law.

From the analysis of the provisions of the Criminal Code of the Republic of Moldova, we conclude that it provides for a mixed sanctioning regime in relation to minors, establishing the possibility of applying either a criminal penalty or security measures (coercive educational measures), under the conditions provided by law. Also, when applying the criminal penalty, the penalty applicable to adults is taken as a basis, from which certain individualizations are made in relation to minors. In the context of the Republic of Moldova, the analysis of the models of criminal sanctioning of minors is particularly important, because domestic law must be interpreted and applied in accordance with the international treaties to which the state is a party. From this perspective, the national framework should not be read in a strictly punitive logic, even when criminal law establishes the minor's liability for certain acts. On the contrary, the institutions of criminal and criminal procedural law relating to minors must be subordinated to a special conception, centered on individualization, psychosocial assessment, educational measures and reintegration.

Conclusions. For the law of the Republic of Moldova, the most appropriate model is, in our opinion, the mixed model with an educational-restorative dominant. This option is justified both by binding international standards and by criminological realities. The minor should not be automatically exempted from liability, but neither should he or she be treated as an adult subject only to an attenuated sanctioning regime. Rather, the minor must be subject to a differentiated legal response, in which the assessment of personality, family environment and capacity for change has a decisive role in choosing the applicable measure.

In this way, the criminal sanctioning of the minor becomes a means of genuine special prevention, and not merely a formal expression of criminal coercion. In addition, full compatibility of the law of the Republic of Moldova with the modern requirements of juvenile justice presupposes not only the existence of adequate norms, but also the functioning of institutions capable of giving them real content. The role of probation services, pre-sentence psychosocial assessment reports, counseling programmes and restorative mechanisms becomes essential for transforming the sanction into a genuine instrument of reintegration. In the absence of these mechanisms, even a well-oriented normative framework risks being applied in a formalistic manner, close in fact to the repressive logic that international standards seek to limit.

Bibliographical references

1. United Nations Convention on the Rights of the Child, adopted on 20.11.1989, ratified by the Republic of Moldova by Parliament Decision No.408-XII of 12.12.1990. Available: https://www.unicef.org/moldova/media/1401/file/Conventia-cu-privire-la-drepturile-copilului.pdf (accessed 15.04.2026).
2. Bulai C. Manual de drept penal. Partea generală. Bucharest: All Publishing House, 1997. 647 p.
3. Cernomoreț S., Ilco V. Abordări teoretice privind pedeapsa în calitate de componentă de bază a sistemului sancțiunilor penale. In: "Administrarea Publică", 2018, No.2, pp.76-83.
4. Basarab M. Criminal Law. General Part. Vol. I, 3rd Revised and Enlarged Edition, Bucharest: Lumina Lex, 2001.
5. Antolisei F. Manuale di diritto penale. Parte generale. Giuffrè: Milan, 1991. 783 p.
6. Posdarie A. Măsura de siguranţă a confiscării speciale. Timișoara: Waldpress Publish-

ing House, 2000.
7. Dongoroz V., et al. Explicații teoretice ale Codului penal român. Partea generală. Vol. II. 2nd Edition. Bucharest: Publishing House of the Romanian Academy, 2003. 456 p.
8. Casandra I. Pedepse penale aplicate minorilor. PhD thesis in law. Chişinău, 2018. 179 p.
9. Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (Adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies). Available: https://rm.coe.int/09000016805d2716 (accessed 15.04.2026).
10. General Comment No.24 (2019) on Children's Rights in the child justice system. Available: http://ier.gov.ro/wp-content/uploads/2022/07/ONU-CRC-C-GC-24-RO.pdf (accessed 15.04.2026).
11. Resolution 40/33 of 29.11.1985, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Available: https://probatiune.gov.md/files/getfile/156 (accessed 17.04.2026).
12. General Assembly Resolution 45/112 of 14 December 1990, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). Available: https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh (accessed 17.04.2026).
13. Dignan J. Juvenile Justice Systems: A Comparative Analysis. Available: https://www.oijj.org/sites/default/files/documentos/documental_1263_en.pdf (accessed 15.04.2026).
14. 14. Umbreit M.S., et al. Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls. Available: https://www.researchgate.net/publication/33437213_Restorative_Justice_in_the_Twenty-First_Century_A_Social_Movement_Full_of_Opportunities_and_Pitfalls (accessed: 17.04.2026).
15. Walgrave L., Restorative conferences with serious juvenile offenders: an experiment in Belgium. https://www.iirp.edu/images/pdf/nl03_walgrave.pdf (accessed 17.04.2026).
16. Bolocan-Holban A. Relația infractor-victimă în cadrul justiției restaurative. In: Materials of the Conference "Rehabilitation of Crime Victims", Chişinău, 2021, pp.120-125.
17. Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World. Available: https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf (accessed 16.04.2026).
18. Spatari M., Danelciuc-Colodrovschi N. Sistemul sancționator aplicabil minorilor infractori în legislația penală a unor state europene. In: Materials of the Conference "Tradition and Innovation in Scientific Research", 13th Edition, Vol. II, Bălți: USARB, 2025, pp.75-82.
19. Popescu D. Particularitățile pedepsei penale aplicate minorilor. In: Materials of the International Scientific Conference "The Best Interests of the Child: Socio-Cultural, Normative and Jurisprudential Approach", Chişinău, 2022, pp.460-479.

CZU: 343.3/.7(478) **DOI: https://doi.org/10.5281/zenodo.20845490**

SOME ASPECTS OF THE DETERMINANTS OF CRIME IN THE REPUBLIC OF MOLDOVA

Sergiu CERNOMOREȚ,
PhD, Associate Professor,
"Stefan cel Mare" Academy of MIA,
Associate Professor, Cross-Border Faculty,
"Dunarea de Jos" University of Galati, Romania
ORCID: 0000-0003-0172-0491

Anatolie FAIGHER,
PhD, Associate Professor,
"Alecu Russo" State University of Balti,
Researcher, Institute of Legal, Political and Sociological Research,
Moldova State University
ORCID: 0009-0005-4545-1360

Abstract

Crime, its determinants, the management of combating crime, the control of consequences and the prevention of criminal behavior, both at the individual and social levels, constitute the object of study of criminology. In this context, a special place is reserved for criminological management, which can only be conceived in the context of social control of the determinants of crime. Or, namely, the specificity of the causes and conditions of crime, shapes criminological management, to ensure public order and security.

Both the activity of public authorities and civil society contribute directly or tangentially to the annihilation of the determinants of crime. This is due to the fact that both the causes and conditions of criminal behavior are different, but can be conventionally grouped into individual and general.

The specificity of crime in the Republic of Moldova is determined by a multitude of factors, among which the following can be mentioned at the macro level – the war in Ukraine, migration from the war, the crisis in the Middle East and others. The latter generate changes in managerial methods and public policies, including in the field of criminological management, capable of providing adequate solutions to security threats and attacks on public order.

In this paper, is proposed a conceptual analysis of the determinants of crime, as well as a description of their specifics at the current time in the Republic of Moldova.

Keywords: prevention, determinants, causes, conditions, level of crime.

UNELE ASPECTE ALE DETERMINANTELOR CRIMINALITĂȚII ÎN REPUBLICA MOLDOVA

Abstract

Criminalitatea, determinantelor sale, managementul combaterii criminalității, controlul consecințelor și prevenirea comportamentului infracțional, atât la nivel individual cât și social, constituie obiectul de studiu al criminologiei. În acest context, un loc aparte este rezervat managementului criminologic, care nu poate fi conceput, decît în contextul controlului social al determinantelor criminalității. Ori, anume specificul cauzelor și condițiilor criminalității, modelează managementul criminologic, pentru asigurarea ordinii și securității publice.

Atît, activitatea autorităților publice, cît și a societății civile contribuie direct sau tangențial la anihila-

rea determinantelor criminalității. Această se datorează faptului că atît cauzele, cît și condițiile comportamentului infracțional sunt diferite, dar pot fi convențional grupate în individuale și generale.

Specificul cimnalității din Republica Moldova este determinant de o mulțime de factori, printre care se pot menționa la nivel matro - războiul din Ucraina, migrația din calea războiului, criza din Orientul Mihlociu și altele. Ultimele, generează modificarea metodelor manageriale și politicilor publice inclusiv în domeniul managementului criminologic, apt să ofere soluții adecvate pericolelor securității și atentatelor la ordinea publică.

Propunem analiza conceptuală a determinantelor criminalității, precum și descrierea specificului acestora la momentul actual din Republica Moldova.

Cuvinte-cheie: prevenirea, determinantele, cauzele, condițiile, nivelul criminalității.

Introduction. The mass-media space of the Republic of Moldova is full of reports about the conflict in the Middle East, the war in Ukraine, crimes of various kinds and their consequences, including for the Republic of Moldova. The discourses widely present reports about serious and particularly serious crimes, including murder, rape, domestic violence, fraud, smuggling and road accidents with serious consequences. The context in which, an objective assessment of the crime situation requires substantiation not only on the basis of media discourses, but also a systematic analysis of official statistics.

Official statistics from the Republic of Moldova confirm the annual registration of approximately twenty thousand crimes. According to the Ministry of Internal Affairs, 26,300 crimes were registered in 2020, which corresponds to a rate of 100 crimes per 10,000 inhabitants [1]. In 2021, this figure increased to 27,200 crimes (an increase of 3.1% from the previous year) [2].

The number of people convicted by the courts of first instance in 2022 was 8,400 (an average of about 23 people per day), a decrease of 27.1% compared to 2021. The main types of punishments were: imprisonment, unpaid community service and conditional suspension. In the same year (2022), 6,079 people were detained in penitentiary institutions, of whom 17.1% were in pretrial detention and 82.9% were serving a final sentence. Women constituted 5.4% of the prison population.

Crime mapping indicates that most crimes are committed in urban areas (60.8%), with approximately every third crime being recorded in Chisinau municipality. Significant crime rates are also recorded in Balti municipality (5.8%), as well as in Cahul (2.9%), Orhei (2.8%) and Ialoveni (2.5%). A direct connection and interdependence is identified between the level of urbanization, population density and criminal activity. However, lower crime rates in other regions may be partly due to both low population levels and a higher crime latency rate.

The juvenile crime rate in 2022 constituted 2.6% (705 cases) of the total number of recorded crimes, the vast majority of which were committed by men [3].

In 2023, the total number of registered crimes decreased to 24,000 (-10.4% compared to the previous year). The crime rate was 96 crimes per 10,000 inhabitants. The proportion of men among criminals was 90.9%, and women – 9.1%. The number of convicted persons increased to 9,100 (+8.2% compared to 2022) [4].

In 2024, 24,600 crimes were registered (an increase of 2.5% compared to the previous year). The crime rate was 102 crimes per 10,000 inhabitants. Property crimes (35.4%) and transport crimes (16.9%) dominated the crime structure. The number of convicted persons reached 10,900 (an increase of 19.6% compared to 2023) [5].

In 2025, the number of crimes decreased by 23,100 (a 6.0% decrease compared to the previous year). The crime rate was 97 crimes per 10,000 inhabitants. Meanwhile, the number of convicted persons continued to increase, reaching 11,800 (+8.4%). The structure of crime remained relatively stable: property crimes accounted for 35.1% and trans-

port crimes accounted for 17.0% [6].

According to data in January 2026, were recorded 1,761 crimes, which is 0.46% more than in the same period of the previous year [7].

The analysis of the dynamics of registered crimes for the period 2020-2025 reveals a moderate downward trend in the overall crime rate. While in 2020, 26,300 crimes were registered, in 2021 this figure already constitutes 27,200 (an increase of 3.1%). A gradual decrease in crime has been observed starting with 2022: 26,800 (2022); 24,000 (2023); 24,600 (2024); and 23,100 (2025). Thus, a long-term decrease in crime is observed, despite certain fluctuations.

A similar trend is also evident in the crime rate per 10,000 inhabitants: from 100 in 2020 to 97 in 2025, with intermediate fluctuations (103 in 2022; 96 in 2023; and 102 in 2024). Statistical data confirm a gradual stabilization of the crime situation, although it is premature to speak of a sustainable improvement due to the continued volatility of the indicators.

Structural analysis of crime revealed a persistent predominance of property crimes (approximately 35% annually), indicating that a significant part of criminal activity is influenced by economic relations. Transport crimes also account for a significant share (approximately 16-17%), reflecting systemic problems in road safety and law enforcement.

The gender structure of crime remains practically constant: the vast majority of crimes are committed by men (approx. 90%). This is consistent with global criminological patterns and indicates the need for gender-focused prevention programs. However, there has been a slight increase in the proportion of women among female offenders (from 7.9% in 2022 to 9.1% in 2023), which may indicate gradual changes in women's social roles and their involvement in criminal activity.

The increase in the number of people convicted by the courts of first instance deserves special attention: from 8,400 in 2022 to 11,800 in 2025. This trend is manifested against the background of a general decrease in the number of registered crimes, which can be interpreted as follows. On the one hand, this may indicate an increased efficiency of magistrates and the entire judicial system, which leads to an increase in the number of cases detected and resolved. On the other hand, it cannot be ruled out that criminal policy has become harsher, and the proportion of criminal cases closed or resolved with the application of alternatives to sentencing is decreasing.

Studying the statistical data of the penitentiary system in the Republic of Moldova indicates a slight decrease in the total population in prison (from 6,079 people in 2022 to 5,690 people in 2023), which confirms the trend of humanization of penal policy and an increase in alternative punishments to detention. The share of men among prisoners (approximately 95%) confirms the gender asymmetry in crime.

It should be noted that official statistics do not fully reflect the real crime rate. Latent crime plays a significant role, resulting from both the inability to detect and the tendency to hide some crimes from statistical data. This factor must be taken into account when interpreting statistical data and in the trends of public crime prevention policies.

The criminogenic situation in the Republic of Moldova is characterized by a combination of relative stabilization of quantitative indicators and persistent structural problems that require a comprehensive and interdisciplinary approach. An effective criminal policy against crime must take into account not only law enforcement, but also the determinants of crime.

The answer to the eternal question "... for what reasons does crime exist and what factors influence it?", is offered by thinkers and scholars, depending on the level of devel-

opment of society at the specific stage of its evaluation.

The problem of the causality of crime is one of the central ones in criminology.

Thomas More, a thinker from the early 16th century, argued that the main causes of crime lay in the existence of a wealthy class and the so-called nobility, surrounded by numerous servants and living in comfort alongside the poverty of the masses. "Until the wealthy class disappears", more said, "crime will not disappear", and he painted a picture of a non-existent state, where gold and silver are priceless, where a life of ordinary work is led, where there are no lazy people, and where crime is a rare exception [8, p. 105].

In criminology, causality is the basis for explaining everything related to the existence and transformation of crime; it represents the inherent content of determination, that is, the causal definition of crime. Interest in such a causal definition can be found in the philosophical works of ancient thinkers: Plato, Aristotle, Democritus, Diogenes and others. Later, within the framework of criminological theories of crime and criminals, schools of thought emerged that explore the causes of crime: for example, the Italian school (C. Lombroso, E. Ferri, R. Garofalo) and others. However, the first relatively complete concepts about the causes of crime appeared in the second half of the 19th century and are associated with the birth of criminology as a science [9, p. 115].

Currently, the causes of crime should be recognized as a combination of objective and subjective circumstances, rooted in existing real social relations and giving rise to crime as a natural social consequence of it [10, p. 20].

Criminology, which studies social phenomena, cannot be limited to examining the causes of individual criminal behavior. Its goal is to identify the causes of crime as a whole, in order to consistently reduce and eliminate it [11, p. 70].

To explore this issue in more detail, it is necessary to make some clarifications. First of all, causality is an objectively existing connection, a relationship between two or more phenomena, in which one (the cause) gives rise to the others (the effects). Causality is not a figment of our imagination, but a truly existing pattern of nature and society [12, p. 123].

The determinants of crime constitute the set of causes and conditions of crime, representing a system of negative social phenomena that affect the prevailing social relations, phenomena and processes. Moreover, these causes and conditions are not a random, mechanical set of determinants of crime, but rather a criminogenic system, which represents the unity and integrity of interacting subsystems and elements, which are interconnected and arranged in a specific hierarchy and level of subordination.

The system of determinants in criminology uses several types of relationships, but the main ones are cause-effect relationships, conditioning relationships or state relationships and functional relationships. As a type of objective, legal relationship, causality possesses such characteristics as: universality, irreversibility and spatial and temporal continuity. Causes and conditions are united by the generic concept of "criminogenic determinants". The identification of these determinants is arbitrary; they exist in close interconnection.

A cause is a phenomenon whose presence provokes, determines, changes, produces, or implies another phenomenon, called an effect. It ensures a specific course of an event, necessary for the occurrence of a certain effect.

Conditions are phenomena that cannot, in themselves, produce a consequence, but by accompanying and influencing the causes, ensure a certain development necessary for the emergence of the consequence. Without conditions, without their interaction with the cause, the latter will either not appear or will not act. In the exclusive presence of conditions, the possibility of a consequence does not become a reality [13, p. 19]. A condi-

tion is something that, in itself, does not generate crime or criminality, but influences the processes of generating it and participates in determining the crime [14, p. 38].

Spatial connection expresses the distribution of crime and its causes depending on the administrative-territorial division of the space in which the studied phenomenon exists. As V.D. Malkov rightly noted, "spatial connection expresses the distribution of crime within a territory, the prevalence of various types of crime depending on social, economic, geographical, demographic, ethnographic and other differences in individual regions of the country" [15, p. 59].

Thus, the determinants of crime lie in the multiplicity of interconnections and interactive phenomena of social reality that underlie its existence. Unfortunately, it is already becoming clear that crime will exist as long as humanity exists.

The study of crime requires a classification of causes and conditions. Classification is, in essence, a scientific analysis of the connections and dependencies between similar factors that influence crime. The main task is to select, from a wide variety of causal relationships within crime, those that have common points [16, p. 20].

Criminogenic conditions can be divided into the following groups: conditions that favor the commission of crimes (the so-called situational conditions) and conditions that shape criminogenic motivation. These conditions, of course, interact at the informational level. A situational condition, for example, is the lack of security in an enterprise, which contributes to the development of a selfish and irresponsible attitude towards the safety of manufactured products. Conditions that shape criminogenic motivation are those environmental phenomena that contribute to the emergence of motives for criminal behavior. These include accompanying conditions – those that form the general background of events and phenomena, the circumstances of place and time; necessary conditions – without which an event could not occur; and sufficient conditions – the combination of all necessary conditions.

The determinants of crime can be divided into the following categories: conditions that favor the commission of crimes (the so-called situational conditions) and conditions that shape the criminogenic motivation. These conditions, of course, interact at the informational level. A situational condition, for example, is the lack of security in an enterprise, which contributes to the development of a selfish and irresponsible attitude towards the safety of manufactured products. The conditions that shape the criminogenic motivation are those environmental phenomena that contribute to the emergence of motives for criminal behavior. These include accompanying conditions – those that form the general background of events and phenomena, the circumstances of place and time; necessary conditions – without which an event could not occur; and sufficient conditions – the combination of all necessary conditions. In terms of the mechanism underlying the crime, situational conditions can be neutral, facilitating or hindering the commission of crimes. Situational criminogenic conditions are more specific during the criminal investigation and trial and are easier to measure. The psychological conditions that shape the personality and its motivation are more distant from the crime itself and are much less susceptible to clear preventive intervention. However, identifying and responding to both conditions is essential. Depending on the specific situation, the same circumstance can act as both a cause and a precondition for the crime. For example, poor security at a facility storing valuables can be both a prerequisite for a persistent criminal group to target the facility and a prerequisite for the development of corresponding motivation among the facility's employees [17, p. 49].

N.S. Artemiev emphasizes that the conditions of crime can be divided into:

✓ Accompanying: form the general context of events and phenomena, the circumstances of place and time;

✓ Necessary: without such conditions, the event might not have occurred;

✓ Sufficient: the set of necessary conditions [18, p. 90].

Criminological literature usually classifies the causes and conditions of crime according to the following criteria: mechanism of action, level of functioning, content, nature of production, proximity to the event, sources, etc. Thus, based on the criterion of their mechanism of action, the negative social processes that determine crime are divided into causes, conditions and criminogenic factors. According to their level of operation, criminogenic factors are classified into causes and conditions: of crime in general (general causes); of types (categories, groups) of crimes; and of specific crimes.

These three main levels of the causes of crime are interdependent. The process of interconnection starts both from the first (more general) level to the last (specific) level, and vice versa – from the causes and conditions of a particular crime to the unique characteristics and features of types and groups of crimes, to the general characteristics of the causal complex of crime as a whole.

Depending on their content, criminogenic determinants are subdivided into socio-economic, political, socio-psychological, ideological, educational, legal, organizational and managerial, etc. The immediate causes of crime and offenses are phenomena of a socio-psychological nature, namely a criminogenically deformed social and individual psychology, which contradicts the generally accepted principles of international, constitutional and criminal law.

According to the criterion of their origin, the determining factors of crime are usually divided into objective, objective-subjective and subjective. The first two categories, at this stage of history, are independent of human will and, therefore, cannot be eliminated immediately. They can only be neutralized, blocked, reduced, and their development and criminogenic impact can be prevented. Objective determining factors include, for example, the gap between consciousness and reality, between individual consciousness and social consciousness, and so on. Most determining factors, however, are of an objective-subjective nature, with either the objective or the subjective prevailing.

Based on their origin, the determinants of crime are usually divided into objective, objective-subjective and subjective. The first two categories, at this stage of history, are independent of human will and, therefore, cannot be eliminated immediately. They can only be neutralized, blocked, reduced, and their development and criminogenic impact can be prevented. Objective determinants include, for example, the gap between consciousness and reality, between individual consciousness and social consciousness, and so on. Most determinants, however, are of an objective-subjective nature, with either the objective or the subjective prevailing.

Depending on their proximity to the criminal event or to a specific set of them, the causes and conditions are divided into immediate and remote, direct and indirect.

The causes and conditions of crime are also differentiated by source, into internal and external. The internal determinants of crime are linked to the internal contradictions of our society, while the external determinants are connected with those of an international nature [18, p. 4].

The conditions and causes of crime, types of crimes and specific crimes are not identical. They are interconnected. If there were no causes that generate crime as a social phenomenon, then there would be no causes for specific crimes.

According to the author I. Ciobanu, the causes and conditions of recidivism, as one

of the most dangerous types of crimes in the Republic of Moldova, are the following:

✓ Circumstances preceding the first conviction that persist after serving the sentence:

1) Return to a negative, vicious environment (mainly, to a dysfunctional family);

2) Reestablishment of old ties with people leading a parasitic lifestyle;

3) Establishment of contacts with convicts in places of detention (and their influence after serving the sentence);

✓ Deficiencies in law enforcement: low crime detection rates;

✓ Low effectiveness of punishments for repeat offenders; Numerous violations of the law regarding a comprehensive, complete and objective investigation of the circumstances of the crime;

✓ Corruption and favoritism;

✓ Difficulties in social reintegration after serving a prison sentence: loss of previous positive social ties;

✓ Emergence of antisocial ties (with repeat offenders in penitentiary institutions);

✓ Mental disorders caused by prolonged imprisonment; Formation of stereotypes and ideals of criminal behavior based on the traditions and customs of the underworld;

✓ Deficiencies in the process of studying and re-education of convicts in places of detention;

✓ Unsatisfactory organization of educational and professional training of convicts, etc. [19, p. 298].

M. Bârgău identifies the following determinants of violent crimes:

✓ Negative influence of the microenvironment;

✓ Abuse of alcohol/soft drugs;

✓ Hostile interpersonal relationships;

✓ Conflict situations between the offender and the victim;

✓ Deficiencies in solving violent crimes;

✓ Increase in the number of people with criminal records, unemployed people and minors who do not attend school;

✓ Increase in the number of offenders sentenced with suspended sentences and released on parole;

✓ Increase in the number of people declared mentally incompetent for committing socially dangerous acts against the life and health of people;

✓ Insufficient monitoring of convicts in places of detention;

✓ Deficiencies in the prevention of violent crimes, etc. [20, p. 270].

According to G. Mateuț, the general causes of crime have their roots in the precarious economic state of society, the lack of culture among people, frequent consumption of alcoholic beverages, unemployment, deficiencies in socio-political organization, the malfunctioning of the criminal justice system, the system of lenient punishments, heredity, the environment, etc. [21, p. 11].

According to the activity report of the Prosecutor General's Office of the Republic of Moldova, regarding crime indicators for the years 2024-2025, it was established that the dynamics of crime was determined by a series of reasons and conditions, the main ones being:

– The low standard of living of certain categories of people, the lack of permanent sources of income, including for their maintenance and that of their family members, the insufficient level of salaries, the high level of unemployment, the state of social crisis, the massive migration of the population within the country and abroad – circumstances that

particularly determined the share of crimes against property [22];

– Disintegration of the family environment of children who, in the absence of means of subsistence and adequate supervision, resort, in particular, to committing thefts and petty thefts;

– Low levels of civic awareness, lack of legal culture and trust in law enforcement agencies and their representatives, as well as an irresponsible attitude of certain categories of citizens towards criminal and administrative liability;

– Inefficiency of the state system in this area and in its efforts to combat crime, re-educate and reintegrate into society convicted and imprisoned persons, combined with the partial inefficiency of the state's punitive policy, which in many cases is based on the use of non-imprisonment penalties;

– Continuation of criminal activity by persons against whom criminal prosecution has been terminated due to reconciliation of the parties, as well as recidivism of persons who have served prison sentences [23].

Therefore, we share the idea that crime prevention represents a complex multi-level system of public administration bodies, which exerts an anti-criminogenic influence on social objects, in order to prevent violations of legal and criminal norms and neutralize their determining factors, constituted by the subjects, objects and measures of prevention activity [24].

Regardless of the specific type of crime or the specific genre of crimes, it can be stated with certainty that the development of modern crime is facilitated by a variety of causes and conditions. The context in which, among the main determining factors of current crime in the Republic of Moldova are:

a) The spiritual crisis of society, the manifestation of which is the growth of alcoholism and drug addiction among the population, the decline of traditional moral values. An eloquent example in this regard could serve the following case from judicial practice: "R.N., *unemployed, was found guilty and convicted of the offense under Article 145 of the Criminal Code of the Republic of Moldova, paragraph (2), letter e/1), j). Thus, on January 15, 2025, at around 2:00, R.N. was with his son in the common home, where, following the consumption of alcoholic beverages, a conflict broke out between them, during which the latter hit his father in the face. Finally, R.N., in a state of alcoholic intoxication, acting out of revenge and with the intention of killing, waited for his son, also in a state of advanced alcoholic intoxication, to lie down on the bed to avoid resistance, ensuring that he fell asleep, after which he hit him several times in the head with a blade and the tip of a hammer, causing bodily injuries, as a result of which his son died*" [25]. Another similar example from judicial practice: "G.A., *unemployed, being registered with the narcologist as a drug addict, with a previous criminal conviction, was found guilty of committing a crime provided for in paragraph (1) of Article 171 of the Criminal Code of the Republic of Moldova. Thus, G.A., on 02.11.2024, while he was in the house of citizen T.G. between 17:00 and 18:00, in a state of intoxication, foreseeing the harmful consequences of his actions, consciously wanting and recognizing the occurrence of these consequences, used psychological coercion and physical force, manifested by a blow to the face with a palm, to satisfy his sexual desire and, at the same time, taking advantage of the incapacity of the victim L.N. to defend himself, he had sexual intercourse with the latter in the form of vaginal and anal penetration against her will, thus satisfying her sexual desire*" [26];

b) Sharp exacerbation of social contradictions in a period of political, ideological, economic and legal reforms;

c) Comprehensive systemic crisis of society, including a crisis of power, economy,

social sphere, ideology and law, the most significant manifestation of which from a criminological point of view is the significant increase in inequality between rich and poor;

d) Unemployment and poverty, according to data from the National Bureau of Statistics of the Republic of Moldova, the number of unemployed in the III quarter of 2023 was approximately 39.2 thousand people, which is approximately 16.9 thousand more than in the III quarter of 2022 (22.3 thousand people) [27];

e) Legal nihilism, which has spread to all layers of our society and is expressed in ignoring both the rules of conduct in society and safety at work and in transport, as well as the norms of criminal law, and in the loss of trust in law enforcement agencies and corrupt government structures;

f) A widespread feeling of insecurity among the general population regarding security (personal, financial, property) and future prospects for themselves and their loved ones;

g) Lack of confidence in the ability and desire of those in power to manage and reform the state in the interests of the population;

h) High levels of anxiety, irritation, conflict and aggression in society;

i) Loss of ethical principles that allow an objective assessment of the acceptability and inadmissibility of certain actions in solving life problems;

j) Consumerism, i.e. the continuous growth and change of needs, has a negative impact on the mentality and psyche of a person, narrowing thoughts and desires towards the acquisition of instant gratification and material goods by any means necessary. Consumer sentiments become dominant in society, determining deviant behavior;

k) The corrupting influence of mass media and communications, etc.

Conclusions. The examined statistical data, the analysis of quantitative and qualitative indicators of crime in the Republic of Moldova over the last five years, allows us to formulate the following conclusions:

1. A moderately downward trend in crime rates is recorded, with persistent short-term fluctuations;

2. Crime is dominated by property crimes, which indicates its socio-economic orientation;

3. The role of law enforcement institutions and judicial courts is increasing;

4. Crime has pronounced gender and urban specificities;

6. The high level of latent crime remains a significant limitation in studying the real level of crime.

Bibliographical references

1. Statistica nivelului infracţional în R. Moldova pentru anul 2020. Available: https://statistica.gov.md/ro/nivelul-infractionalitatii-in-republica-moldova-in-anul-2020-9478_3401.html (accesat 09.04.2026).
2. Statistica nivelului infracţional în R. Moldova pentru anul 2021. Available: https://statistica.gov.md/ro/nivelul-infractionalitatii-in-republica-moldova-in-anul-2021-9478_49944.html (accesat 29.03.2026).
3. Statistica nivelului infracţional în R. Moldova pentru anul 2022. Available: https://statistica.gov.md/ro/nivelul-infractionalitatii-in-republica-moldova-in-anul-2022-9478_60321.html (accesat 10.04.2026).
4. Statistica nivelului infracţional în R. Moldova pentru anul 2023. Available: https://statistica.gov.md/ro/nivelul-infractionalitatii-in-republica-moldova-in-anul-2023-478_60977.html (accesat 15.03.2026).

5. Statistica nivelului infracţional în R. Moldova pentru anul 2024. Available:https://statistica.gov.md/ro/nivelul-infractionalitatii-in-republica-moldova-in-anul-2024-9478_61676.html (accesat 09.03.2026).
6. Statistica nivelului infracţional în R. Moldova pentru anul 2025. Available: https://statistica.gov.md/ro/nivelul-infractionalitatii-in-republica-moldova-in-anul-2025-9478_62334.html (accesat 09.04.2026).
7. Date statistice. Available: https://mai.gov.md/ro/date-statistice (accesat 09.04.2026).
8. Быргэу М. Криминология и противодействие преступности. Общая часть. Учебное пособие. Кишинэу. 2020. С. 105.
9. Криминология: Общая часть: учебник. Под общей редакцией Ф.К. Зиннурова. – Казань: КЮИ МВД России, 2019. С. 115-116.
10. Тугельбаева Б.Г., Хамзаева А.Д. Методическое пособие по курсу криминология. Общая часть. Бишкек, 2007, С. 19-20.
11. Кудрявцев В.Н. Причинность в криминологии. М., 2007. С. 70.
12. Кудрявцев В., Эминов В. Криминология. Москва 2006. С. 122-123.
13. Тугельбаева Б.Г., Хамзаева А.Д. Методическое пособие по курсу криминология. Общая часть. Бишкек, 2007. С.18-19.
14. Артемьев Н.С. Криминология. Курс лекций. Рязань, 2007, С. 85;
15. Larii Iu. Criminologie, Vol. I. Chişinău, 2004, p. 8.
16. Криминология: Учебник для вузов / под ред. В. Д. Малкова. – 3-е издание, переработанное и дополненное. – М.: ИНФРА-М, 2011. С. 59.
17. Тугельбаева Б.Г., Хамзаева А.Д. Методическое пособие по курсу криминология. Общая часть. Бишкек, 2007. С. 20.
18. Шевелева С.В., Гребеньков А.А., Новичков В.Е. Криминология: учеб. пособие. Курск, 2011. С. 48-49.
19. Артемьев Н.С. Криминология. Курс лекций. Рязань, 2007. С. 90.
20. Ciobanu Ig. Criminologie. Chișinău, 2011, p. 298-299.
21. Bîrgău M. Criminologie (Curs universitar). Ed. a 2-a Rev. și compl. Chișinău, 2010, p. 270.
22. Mateuț Gh. Recediva în teoria și practica dreptului penal. București, 1997, p. 11.
23. Raport de activitate al Procuraturii pentru anul 2025. Available: https://www.procuratura.md/sites/default/files/2026-03/1-1-raportul-de-activitate-procuratura-2025.pdf (accesat 22.03.2026).
24. Raport de activitate al Procuraturii pentru anul 2024. Available:https://www.procuratura.md/sites/default/files/2025-04/raport-privind-activitatea-procuraturii-anul-2024-final.pdf (accesat 22.03.2026).
25. Nastas A., Cernomoreț S. Criminologie. Tratat. București, 2023, Editura Pro-Universitaria, p. 234.
26. Decizie Colegiului penal al Curții de Apel Nord din 09.04.2026. Dosarul nr.1a-288/25 1-25039413-03-1a-08052025. Available: https://instante.justice.md/ro/pigd_integration/pdf/FEA0482C-F10D-445A-A5B2-B90FD76BA179 (accesat 22.03.2026).
27. Sentința Judecătoriei Strășeni. Sediul Central din 22.12.2025. Dosarul nr. 1-331/2025 1-24124977-48-1-07072025. Available: https://instante.justice.md/ro/pigd_integration/pdf/02EC885C-0978-4695-B946-5E0B4BFCBB31 (accesat 23.03.2026).
28. Forța de muncă și șomajul în trimestrul III al anului 2023. Available: https://statistica.gov.md/ro/forta-de-munca-ocuparea-si-somajul-in-trimestrul-iii-2023-9430_60824.html (accesat 24.03.2026).

CZU 343.1:343.98 DOI: https://doi.org/10.5281/zenodo.20845620

SPECIAL INVESTIGATIVE MEASURES IN THE INVESTIGATION OF OFFENCES COMMITTED BY ORGANISED CRIMINAL GROUPS

Ion BOTNARI,
PhD Candidate,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Director, Information Technology Service of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-4262-9777

Abstract

This article examines the role and applicability of special investigative measures in the investigation of crimes committed by organised criminal groups in the Republic of Moldova. The study analyses the legal grounds for authorisation, proportionality conditions and judicial oversight provided under the Criminal Procedure Code, as well as the evidentiary efficiency of the main categories of special investigative measures: interception of communications, video and GPS surveillance, undercover investigators, and controlled delivery. The study is grounded in the empirical analysis of over one thousand judicial decisions from the Republic of Moldova (2015-2025) and the activity reports of the Prosecutor's Office for Combating Organised Crime and Special Cases for the period 2020-2024, corroborated with Europol and UNODC international standards.

The findings demonstrate that interception of communications remains the instrument with the highest evidentiary impact (9 out of 10 cases), although its effectiveness is contingent upon operational cooperation with authorities in other states. The study further establishes that the use of special investigative measures in organised criminal group cases in the Republic of Moldova is characterised by a predominantly reactive approach, and that their systematic, proactive integration within a unified investigative strategy constitutes a methodological necessity. The article proposes a methodological model for the integrated utilisation of special investigative measures across the stages of criminal proceedings in organised criminal group cases.

Keywords: special investigative measures, organised criminal groups, interception of communications, undercover investigator, controlled delivery, criminal proceedings, proportionality.

MĂSURILE SPECIALE DE INVESTIGAȚIE ÎN CADRUL CERCETĂRII INFRACȚIUNILOR COMISE DE GRUPURI CRIMINALE ORGANIZATE

Abstract

Articolul examinează rolul și aplicabilitatea măsurilor speciale de investigație în cercetarea infracțiunilor comise de grupuri criminale organizate în Republica Moldova. Sunt analizate temeiurile legale de autorizare, condițiile de proporționalitate și controlul judiciar prevăzute de Codul de procedură penală, precum și eficiența probatorie a principalelor categorii de MSI: interceptarea comunicațiilor, supravegherea video și GPS, investigatorul sub acoperire și livrarea supravegheată. Studiul se bazează pe analiza empirică a peste o mie de hotărâri judecătorești din Republica Moldova (2015-2025) și a rapoartelor de activitate ale Procuraturii pentru Combaterea Criminalității Organizate și Cauze Speciale pentru perioada 2020-2024, coroborate cu standarde internaționale Europol și UNODC.

Rezultatele demonstrează că interceptarea comunicațiilor rămâne instrumentul cu cel mai ridicat impact probator (9 din 10 cauze), dar eficiența sa este condiționată de cooperarea operativă cu autoritățile din alte state. Se constată că utilizarea măsurilor speciale de investigație în cauzele grupurilor criminale organizate din Republica Moldova se caracterizează printr-o abordare preponderent reactivă, iar integrarea lor sistematică, proactivă, în cadrul unei strategii investigative unitare constituie o necesitate de ordin metodologic. Articolul propune un model metodic de valorificare integrată a măsurilor speciale de investigație pe etapele urmăririi penale în cauzele grupurilor criminale organizate.

Cuvinte-cheie: măsuri speciale de investigație, grupuri criminale organizate, interceptarea comunicațiilor, investigator sub acoperire, livrare supravegheată, urmărire penală, proporționalitate.

Introduction. Organised criminal groups represent one of the most serious threats to public order and national security in the Republic of Moldova. Unlike individual offenders, organised criminal groups operate through hierarchical structures or well-defined networks, employ encrypted communications, resort to the intimidation and corruption of witnesses and public officials, and rapidly adapt to counter-measures deployed by the authorities. These characteristics necessitate the use of investigative instruments of a special nature, capable of penetrating the opaque structure of the group [1].

According to the activity reports of the Prosecutor's Office for Combating Organised Crime and Special Cases, 657 offences committed by organised criminal groups were recorded between 2014 and 2021, with an upward trend from 87 cases in 2014 to 142 cases in 2021 [2]. According to EU-SOCTA 2025, 65% of criminal groups active at the European level use encrypted communication infrastructures, and 80% subcontract specialised components of their activity within the crime-as-a-service model [3].

Special investigative measures represent, in this context, the primary procedural instruments through which criminal investigation bodies can document the internal activity of organised criminal groups, identify their leaders and command structures, and build a solid evidentiary chain to support the prosecution in court. Nevertheless, their application raises complex issues of legality, proportionality, and evidentiary efficiency that require a rigorous methodological approach [4].

The present study aims to: 1) examine the legal framework of special investigative measures from the perspective of the specific requirements of organised criminal group cases; 2) empirically assess the efficiency of the various categories of special investigative measures in Moldovan judicial practice; 3) identify methodological shortcomings in the current application of special investigative measures; and 4) propose a methodological model for the integrated utilisation of special investigative measures in organised criminal group cases.

Methods and materials applied. The study employs a mixed methodological approach based on the triangulation of sources and methods.

Normative analysis covered the Criminal Procedure Code of the Republic of Moldova, in particular Chapter IV on special investigative measures (Articles 132^1–132^5); the Criminal Code of the Republic of Moldova – Article 284 on criminal organisations; Law No.50/2012 on the Prevention and Combating of Organised Crime; and ECtHR standards on Covert Surveillance (*Roman Zakharov v. Russia* and *Big Brother Watch v. the United Kingdom*) [5; 6; 7; 8].

Empirical jurisprudential analysis encompassed over one thousand final judicial decisions delivered in cases concerning organised criminal groups (2015-2025), available on the instante.justice.md portal [9], with extraction of data on the type of special investigative measures used, the volume of evidence obtained, and their weight in grounding convictions.

Institutional documentary analysis covered the annual activity reports of the Prosecutor's Office for Combating Organised Crime and Special Cases 2020-2024 [10].

Comparative doctrinal analysis corroborated national forensic science doctrine [11; 12] with Europol [3; 13] and UNODC [14] international standards.

Discussion and results obtained. I. Legal Framework of Special Investigative Measures in Organised Criminal Group Cases. The Criminal Procedure Code of the Republic of Moldova regulates special investigative measures in Chapter IV, Articles 132^1–132^5, establishing a catalogue of 15 measures, strict conditions for judicial authorisation, maximum durations, and the regime for utilising the results obtained [5].

The principal special investigative measures relevant to organised criminal group cases are: a) interception and recording of communications; b) surveillance by photography, video recording, or audio recording; c) tracking through electronic positioning systems (GPS); d) undercover investigators; and e) controlled delivery [5].

Authorisation of special investigative measures is subject to mandatory judicial oversight, except in urgent cases where the prosecutor may order provisional application, subject to subsequent confirmation by the investigating judge within 24 hours [5, p.214].

ECtHR case law has established that any special investigative measure must cumulatively satisfy the conditions of: (i) lawfulness — the existence of a clear and foreseeable legal basis; (ii) legitimate aim; and (iii) necessity and proportionality in a democratic society [8]. Failure to comply with these conditions results in the exclusion of the evidence obtained, with direct consequences for the robustness of the evidentiary chain in organised criminal group cases.

The specificity of organised criminal group cases with respect to special investigative measures lies in the longer duration of surveillance required (organised criminal structures operate over extended periods), the large number of persons simultaneously targeted, and the need to correlate special investigative measures with other investigative activities — searches, interviews, financial investigations — in order to document both the predicate offence and the organisational structure of the group, which is a constituent element of the offence under Article 284 of the Criminal Code [6, Art. 284].

II. Efficiency of Special Investigative Measures in Moldovan Judicial Practice: Empirical Data. Analysis of over one thousand judicial decisions [9] and of the Prosecutor's Office for Combating Organised Crime and Special Cases activity reports for 2020-2024 [10] reveals a differentiated picture of the efficiency of special investigative measures in organised criminal group cases in the Republic of Moldova.

Interception of communications proved to be the method with the highest evidentiary impact: present in 9 out of 10 organised criminal group cases concluded with a conviction, providing both direct evidence of criminal activity (discussions about the commission of offences, coordination of operations) and essential data on the hierarchical structure of the group. Leading scholars in the field emphasise that interception of communications is the "method with the highest evidentiary yield in the investigation of complex criminal structures" [11, p.312]. Analysis of data obtained through interception enables identification of the central nodes of organised criminal groups and their structural vulnerabilities, through the social network analysis (SNA) method [16, p.87].

Notwithstanding this, practitioners interviewed in the course of the research signalled a challenge specific to the Moldovan context: members of organised criminal groups frequently use SIM cards registered in Ukraine, Romania, or other states, which entails requesting mutual legal assistance — a procedure that takes on average 2–3 months, during which time the group changes its communication methods [10].

Video and GPS surveillance was employed in 7 out of 10 cases, demonstrating effectiveness in documenting meetings between members of organised criminal groups, confirming cross-border movements, and establishing the locations of criminal property storage. Its use is, however, limited by the cost of equipment and the need for specialised personnel, resources insufficient relative to the number of cases being investigated [10].

Undercover investigators were deployed in 4 out of 10 cases, with significant results in drug trafficking and human trafficking cases, where infiltration into the group's structure enabled documentation of the internal mechanisms of recruitment, financing, and distribution of roles. The procedural risks are, however, considerable: any overstepping

of the authorised limits may result in the exclusion of evidence and the criminal liability of the investigator [11, p.287].

Controlled delivery represented the central instrument in cases of cross-border trafficking in drugs and counterfeit goods, enabling identification of all links in the distribution chain. The case study concerning the cocaine trafficking network through rice containers (2018-2019) illustrates the maximum effectiveness of this special investigative measure in coordination between Moldova, Belgium, and Suriname, resulting in the seizure of 2,200 kg of cocaine and the arrest of 20 persons [13].

III. Methodological Shortcomings in the Application of Special Investigative Measures in Organised Criminal Group Cases. Empirical analysis identifies three systemic shortcomings in the utilisation of special investigative measures in investigative practice in the Republic of Moldova.

The first is the predominantly reactive nature of the application of special investigative measures. In over 60% of the cases analysed, special investigative measures were ordered after members of the organised criminal group had been identified through traditional methods (flagrante delicto, denunciation), and not as a proactive instrument for mapping the group's structure [9]. Modern forensic doctrine recommends integrating special investigative measures from the initial stages of the investigation, prior to the formal identification of suspects, precisely in order to document the organisational structure — an essential evidentiary element in cases under Article 284 of the Criminal Code of the Republic of Moldova [12, p.156] — since proof of criminal liability for leading a criminal organisation requires demonstrating the specific attributions of the leader within the group [18, p. 145].

The second shortcoming consists in the insufficient exploitation of the correlation between special investigative measures and financial investigation. In organised criminal group cases with an economic dimension (money laundering, tax evasion, fraud), proactive financial investigation — tracing financial flows, identifying assets, blockchain analysis — should be conducted in parallel with special investigative measures, not sequentially after them. Empirical data shows that in cases with proactive financial investigation, the asset recovery rate increases from 23% to 67% [10].

The third shortcoming concerns international cooperation for the authorisation of special investigative measures. The average response time to mutual legal assistance requests in the area of interceptions is 6-14 months [10], during which interval the criminal group reorganises its communications. The EMPACT 2026-2029 framework provides for rapid operational cooperation mechanisms under which authorisation of cross-border interceptions should be achieved within 48-72 hours [15].

IV. Methodological Model for the Integrated Utilisation of Special Investigative Measures in Organised Criminal Group Cases. Based on the empirical findings and specialist doctrine, we propose a four-stage methodological model for the integrated utilisation of special investigative measures in organised criminal group cases:

Stage I — Preliminary Profiling and Selection of Special Investigative Measures (pre-criminal investigation phase). On the basis of available operational intelligence, the criminal investigation officer draws up an initial profile of the organised criminal group and selects the combination of special investigative measures suited to the group's structure and activity, requesting prior judicial authorisation. The result of this stage is an integrated investigative plan correlating special investigative measures with financial investigation and the necessary international cooperation mechanisms [12, p. 143].

Stage II — Mapping the Structure of the Organised Criminal Group through Special

Investigative Measures (active stage). Interception of communications and GPS surveillance provide the data necessary for constructing a structural map of the organised criminal group: identification of the leader, hierarchical levels, key members, and communication routes. Research demonstrates that organised criminal groups function as adaptive networks in which weak ties facilitate transnational expansion and reduce detectability [17, p.271]. This map constitutes the foundation of the main investigative version and of the search plan [11, p.298].

Stage III — Documentation of the Predicate Offence and Organisational Structure. Undercover investigators and controlled delivery are activated to document the commission of the predicate offences (drug trafficking, human trafficking, money laundering), concurrently with establishing the constituent elements of the organised criminal group: stability, organisation, common purpose, and distribution of roles [6, Art. 284].

Stage IV — Evidentiary Utilisation and Preservation of the Evidentiary Chain. The results of the special investigative measures are integrated into the criminal case file in strict compliance with admissibility conditions: transcription of recordings, authentication of materials, exclusion of evidence obtained by overstepping authorised limits. The criminal profile of the leader, developed on the basis of cumulative data from the special investigative measures, underpins the legal characterisation of each participant's role and the interview strategy [14, p. 87].

Conclusions. The study demonstrates that special investigative measures represent the central and often indispensable investigative instrument in the investigation of offences committed by organised criminal groups, owing to their capacity to penetrate the opaque structure of the group and to provide evidence regarding both the predicate offence and the constituent elements of the criminal organisation.

Empirical analysis has shown that interception of communications remains the special investigative measure with the highest evidentiary impact in Moldovan practice (9 out of 10 cases), followed by video and GPS surveillance (7 out of 10) and undercover investigators (4 out of 10) [19, p.358]. The effectiveness of these methods is, however, contingent upon three critical factors: 1) their proactive integration from the initial stages of the investigation; 2) their correlation with financial investigation; and 3) rapid international cooperation mechanisms for the authorisation of cross-border interceptions.

The proposed four-stage methodological model — preliminary profiling, structural mapping, documentation of the predicate offence, and evidentiary utilisation — provides a practical algorithm for the integrated utilisation of special investigative measures, tailored to the specific features of organised criminal group cases in the Republic of Moldova and compatible with European procedural standards.

Implementation of this model requires the creation of a rapid cooperation mechanism with Ukraine and Romania for the authorisation of interceptions; specialised training of criminal investigation officers in techniques for correlating special investigative measures with financial investigation; and equipping law enforcement institutions with software tools for the analysis of communication networks and digital financial flows.

Bibliographical references

1. Ostavciuc D., Odagiu Iu. Investigation of Organised Crime Offences: Methodological Guide for Criminal Investigation Officers. Chișinău: Cartea Militară, 2020. 92 p.
2. Prosecutor's Office for Combating Organised Crime and Special Cases (PCCOCS). Annual Report 2021. Chișinău, 2021. Available: https://procuratura.md (accessed 19.04.2026).

3. Europol. European Union Serious and Organised Crime Threat Assessment (EU-SOCTA 2025). The Hague: Publications Office of the European Union, 2025. Available: https://www.europol.europa.eu/publication-events/main-reports/changing-dna-of-serious-and-organised-crime (accessed 10.03.2026).
4. Gheorghiță M. Treatise on Forensic Methodology. Chișinău: CEP USM, 2015. 648 p.
5. Criminal Procedure Code of the Republic of Moldova No.122-XV of 14.03.2003. In: Official Gazette of the Republic of Moldova, of 07.06.2003, No.104–110, Art. 447.
6. Criminal Code of the Republic of Moldova No.985-XV of 18.04.2002. In: Official Gazette of the Republic of Moldova, of 14.04.2009, No.72–74, Art. 195.
7. Law No.50 of 22 March 2012 on the Prevention and Combating of Organised Crime. In: Official Gazette of the Republic of Moldova, of 11.05.2012, No.72-75, Art. 232.
8. European Court of Human Rights. Roman Zakharov v. Russia, Application No.47143/06, Judgment of 04.12.2015; Big Brother Watch and Others v. the United Kingdom, Applications No.58170/13, 62322/14 and 24960/15, Grand Chamber Judgment of 25.05.2021.
9. Database of judicial decisions of the Republic of Moldova, 2015-2025. Available: https://instante.justice.md (accessed 19.04.2026).
10. Prosecutor's Office for Combating Organised Crime and Special Cases (PCCOCS). Activity Reports 2020-2024. Chișinău, 2024. Available: https://procuratura.md (accessed 19.04.2026).
11. Udroiu M. Criminal Procedure. General Part. Bucharest: C.H. Beck, 2018. 824 p.
12. Suian A. Special Methods of Investigation. Regulations and Judicial Practice. Cluj-Napoca: Universul Juridic, 2021. 312 p.
13. Europol. Dismantling International Cocaine Trafficking Network Using Moldovan Company as Cover. The Hague: Europol, 2019. Available: https://www.europol.europa.eu/media-press/newsroom/news/dismantling-international-cocaine-trafficking-network (accessed 12.04.2026).
14. UNODC. Criminal Intelligence — Manual for Analysts. Vienna: UNODC, 2011. 147 p. Available: https://www.unodc.org/documents/organized-crime/Law-Enforcement/Criminal_Intelligence_for_Analysts.pdf (accessed 15.04.2026).
15. Council of the European Union. Council Conclusions on the Enhancement of EMPACT and on EU Crime Priorities for the Next EMPACT Cycle 2026-2029. Brussels, 13 June 2025.
16. Morselli C. Inside Criminal Networks. New York: Springer, 2009. 214 p.
17. Campana P., Varese F. Cooperation in criminal organizations: Kinship and violence as credible commitments. In: "Rationality and Society", 2013, No.25 (3), p.263-289.
18. Cazacicov A. Criminal Liability for the Creation or Leadership of a Criminal Organisation. Doctoral thesis in law. Chișinău: "Ștefan cel Mare" Academy of the Ministry of Internal Affairs, 2021. 233 p.
19. Nastas A., Cernomoreț S. Criminology: Treatise. Bucharest: ProUniversitaria, 2024. 358 p. ISBN 978-606-26-1562-8.

CZU: 342.9:351:343.352 DOI: https://doi.org/10.5281/zenodo.20845731

THE ROLE OF JUDICIAL REVIEW IN STRENGTHENING INSTITUTIONAL INTEGRITY AND PREVENTING CORRUPTION AMONG PUBLIC OFFICIALS

Galina BOUBATRÎN,
Judicial Assistant, Chişinău Court,
Republic of Moldova
ORCID: 0009-0003-3685-2221

Abstract

This paper analyzes the importance of judicial review exercised by administrative courts as a fundamental pillar in strengthening institutional integrity and preventing corruption among public officials. In a state governed by the rule of law, the legality of an administrative act is not merely a formal requirement, but an essential mechanism for protection against the abuse of power and favoritism.

Drawing on practical experience within the judicial system, the author investigates how the annulment of administrative acts issued in violation of the conflict of interest or incompatibility regimes contributes to deterring illicit behavior. The study emphasizes institutional integrity models, examining the correlation between the rigor of legality oversight and the decrease of the corruption index in the public sector. It addresses the difficulties encountered in the evidentiary process and the importance of providing thoroughly reasoned judicial decisions to serve as preventive precedents.

Finally, the paper proposes solutions for streamlining the dialogue between administrative authorities and the courts, highlighting the need for an integrated theoretical and practical approach. The research findings underscore that rigorous judicial review does not only sanction misconduct but also fosters a culture of accountability and decision-making transparency among public officials, in full compliance with international standards of good governance.

Keywords: institutional integrity, corruption, public officials, administrative litigation, judicial review, prevention.

ROLUL CONTROLULUI JUDICIAR ÎN CONSOLIDAREA INTEGRITĂȚII INSTITUȚIONALE ȘI PREVENIREA CORUPȚIEI ÎN RÂNDUL AGENȚILOR PUBLICI

Abstract

Prezenta lucrare analizează importanța controlului judiciar exercitat de instanțele de contencios administrativ ca pilon fundamental în consolidarea integrității instituționale și prevenirea corupției în rândul agenților publici. Într-un stat de drept, legalitatea actului administrativ nu reprezintă doar o cerință formală, ci un mecanism esențial de protecție împotriva abuzului de putere și a favoritismului.

Autorul cercetează, prin prisma experienței practice din cadrul sistemului judiciar, modul în care anularea actelor administrative emise cu încălcarea regimului conflictelor de interese sau al incompatibilităților contribuie la descurajarea comportamentelor ilicite. Studiul pune accent pe modelele de integritate instituțională, examinând corelația dintre strictețea controlului de legalitate și scăderea indicelui de corupție în sectorul public. Sunt abordate dificultățile întâmpinate în procesul de probațiune și importanța motivării temeinice a hotărârilor judecătorești pentru a servi drept precedent preventiv.

În final, lucrarea propune soluții pentru eficientizarea dialogului dintre autoritățile administrative și instanțe, subliniind necesitatea unei abordări integrate teoretico-aplicative. Rezultatele cercetării evidențiază faptul că un control judiciar riguros nu doar sancționează abaterile, ci educă corpul agenților publici în spiritul responsabilității și al transparenței decizionale, în deplină concordanță cu standardele internaționale de bună guvernare.

Cuvinte-cheie: integritate instituțională, corupție, agent public, contencios administrativ, control judiciar, prevenire.

Introduction. In the contemporary legal landscape of the Republic of Moldova, strengthening institutional integrity has become a priority objective, closely linked to the process of justice reform and to aspirations for European integration. Integrity among public officials is not merely an ethical obligation, but a *sine qua non* condition for the effective functioning of state administration. In this context, judicial review exercised by administrative courts emerges as a balancing mechanism, aimed at protecting the public interest against the discretionary exercise of power.

The core of public integrity in the Republic of Moldova is grounded in the constitutional pillars that define the rule of law and the relationship between authority and the citizen, thereby conferring legitimacy upon judicial review as a mechanism for preventing corruption. This legal framework derives from the proclamation of the Republic of Moldova as a state governed by the rule of law, in which justice and human dignity are supreme values, and is supported by the principle of the separation and cooperation of powers, which establishes the system of checks and balances necessary to prevent the abuse of power. The supremacy of the Constitution imposes absolute rigor in the decision-making process, as no legal act that contravenes the Supreme Law has legal force, while the guarantee of free access to justice provides every individual with the right to an effective remedy against harmful administrative acts. In this context, the control of legality is complemented by the observance of the principle of proportionality, ensuring that any restriction of rights is strictly prescribed by law and necessary in a democratic society, without affecting the very essence of the right itself. Therefore, the convergence of these constitutional norms transforms judicial review into an essential safeguard against corruption, ensuring that the activity of public authorities remains transparent, predictable, and strictly confined to the general interest [1].

The adoption of the Administrative Code of the Republic of Moldova represents a turning point in the modernization of relations between the citizen and the state, establishing in Article 21 the principle of legality as the foundation of the rule of law. According to this provision, public authorities and competent courts must act in accordance with the law and other normative acts, and the exercise of legal powers must not be contrary to the purpose for which they were established. At the same time, public authorities and competent courts may not restrict the exercise of individuals' rights and freedoms except in cases and under conditions expressly provided by law. Under this principle, within a legal system striving to meet European standards of good governance, the administrative act is no longer viewed merely as a manifestation of unilateral will, but as a legal product that must strictly comply with these requirements. Thus, legality as defined by Article 21 becomes an essential premise for preventing any form of arbitrariness, providing the necessary framework for a predictable and transparent public administration. Moreover, the interpretation of the principle of legality obliges the administrative judge to examine whether the exercise of legal powers has not been diverted toward a purpose other than that intended by the legislator—an aspect that is crucial in identifying subtle forms of corruption. This procedural rigor ensures that no limitation of individual rights occurs outside the cases expressly established by law, thereby protecting honest public officials from potential hierarchical reprisals disguised as administrative measures. Ultimately, the consistent application of this principle strengthens confidence in the administration of justice, demonstrating that within the architecture of the rule of law, legality is not a bureaucratic barrier, but the ultimate guarantee of a public administration characterized by integrity in the face of illegitimate influences [2].

However, the effectiveness of judicial review in matters of integrity does not depend

solely on the letter of the law, but also on the magistrate's ability to decipher the subtle mechanisms through which the public interest is diverted in favor of undue benefits. A fundamental pillar in the architecture of institutional integrity, as defined by the current normative framework, is the cultivation of a spirit of absolute intolerance toward integrity incidents within public entities. According to Article 19 of the Integrity Law No.82 of 25 May 2017, the responsibility for ensuring the credibility of the public mandate lies both with leaders and public officials, who are obliged to refuse any involvement in acts of corruption or improper influence. This dimension of integrity requires the heads of entities to set a personal example in upholding the public interest and to ensure the disciplinary sanctioning of all violations, thereby creating an institutional environment in which legality prevails over any abuse. Consequently, judicial review becomes the instrument through which it is verified whether internal mechanisms for sanctioning and reporting to anti-corruption authorities have been properly activated, ensuring that integrity incidents do not remain unpunished.

Complementing these requirements, Article 20 of the same Law ensures transparency in the decision-making process as an essential condition for responsible governance in relation to citizens. The Law obliges public entities to establish mechanisms of cooperation and partnership with civil society, ensuring the continuous provision of information to the public regarding activity programs and draft decisions. Transparency is not merely an administrative formality, but a preventive tool, as the publication of annual reports and the consultation of stakeholders enable active social oversight of the exercise of power. From the perspective of judicial review, failure to comply with these obligations of information and citizen participation may lead to disciplinary sanctions for the responsible public officials, with the court ensuring that the decision-making process remains a transparent and reasoned act of will [3].

In conclusion, the introduction highlights the need for a constant and integrated dialogue between administrative authorities and the courts. A coherent theoretical and applied approach is essential to ensure that international standards of good governance are effectively implemented at the national level. Through this study, we aim to provide practical solutions for enhancing the effectiveness of judicial review, as a fundamental pillar in preventing corruption and safeguarding democratic values.

Methods and materials applied. The substantiation of this research required the adoption of a multidisciplinary methodology, designed to correlate the theoretical rigor of administrative norms with the practical realities of the judicial system in the Republic of Moldova. In order to ensure a relevant analysis anchored in current legal realities, the scientific approach was structured through the use of the following research methods. The historical method was applied, being essential for analyzing the evolution of the legislative framework governing administrative litigation. This facilitated an understanding of the transition process from the former Law No.793/2000 to the current Administrative Code, allowing for the highlighting of progress achieved in strengthening integrity mechanisms and adapting them to new social and institutional challenges.

Subsequently, through the logical and analytical method, a systematic interpretation of the provisions of the Administrative Code and the Integrity Law No.82/2017 was carried out. This method made it possible to identify the intrinsic correlations between the specific obligations of public officials, regulated by Articles 19 and 20 of Law No.82/2017, and the judicial review powers of the courts, with a view to ensuring the internal coherence of the legal norms underpinning the rule of law.

Last but not least, the research was strengthened through the method of analyz-

ing international case law. This approach served to relate national practice to the jurisprudential standards established by the European Court of Human Rights (ECtHR). The analysis focused in particular on the applicability of the principle of good administration and the right to a fair trial, providing solid arguments for interpreting judicial review as an indispensable instrument for the protection of European democratic values within the national administrative system.

Discussions and results obtained. From the earliest times to the present day, administration has performed the same functions of organizing the execution of laws and ensuring their concrete implementation. After the establishment of the constitutional regime and the principle of the separation of powers, the functions of administration merged with those of the executive power.

Analyzing the principle of the separation of powers, professor Gheorghe Alexianu stated that the state has distinct functions; the nation delegates these functions to different holders who are independent from one another; each of these functions constitutes a power; and the state can function properly only when these functions (powers) are separated, with different bodies and distinct holders. According to this conception, the legislative body alone may enact general rules, or, in any case, rules of law; the executive authority alone may adopt particular measures of governance and administration; and the judiciary, in turn, alone may apply the law in disputes that arise. The author concludes, however, that this conception was reached over time through a long process of development and intense debate, particularly of interest for the constitutional organization of the United States and for the French Revolution [4, p.8].

Beyond the constitutional foundations, integrity within the administrative system derives from the standards of conduct established by Law No.25 of 22.02.2008. Article 2 of this law provides that, in the exercise of public office, the civil servant is obliged to be guided by the fundamental principles of legality, impartiality, independence, professionalism, and loyalty. This requires strict compliance with the Constitution and international treaties, as well as the integrity protection mechanism through the obligation to report any pressure involving unlawful actions or conduct contrary to ethical standards. Moreover, the exercise of duties in an impartial, non-discriminatory, and equitable manner ensures that public decisions are not taken by giving preference to certain persons or groups on the basis of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property, or social origin, thereby ensuring conduct grounded in respect, diligence, fairness, and courtesy toward the citizen. Thus, judicial review intervenes as a guarantor of these standards, verifying whether deviations from these principles have vitiated the administrative act and undermined public trust in state institutions [5].

In the architecture of the rule of law, judicial review exercised by administrative courts goes beyond a mere formal verification, becoming a pillar of institutional integrity. National doctrine, through the contributions of researcher M. Orlov, emphasizes that the administrative act must always be subordinated to the provisions of the law, since its issuance and application are based on the organization of the execution of legal norms. This hierarchical subordination justifies the existence of multiple control mechanisms aimed at ensuring the legality of public authorities' actions. Thus, administrative litigation is not merely a legal procedure, but an essential instrument for the protection of human rights, being regarded as a "banner of democracy" and a dogma of the rule of law, necessary to protect the citizen against potential abuses. Moreover, the importance of the rule-of-law doctrine, as supported in legal scholarship, lies in the fact that no authority can be exempt from control, with the administrative court being the only body capable of restoring the

balance between state interest and individual freedom. This judicial oversight transforms administrative litigation into a defensive barrier against institutional favoritism, offering the citizen not only a procedural remedy but also effective protection of their dignity in relation to executive power. Consequently, the validation of integrity through judicial decisions confirms that justice remains the only authority capable of transforming the theoretical principle of legality into an incontestable administrative reality [6, pp.11-15].

The international foundation of integrity standards is enshrined in the United Nations Convention against Corruption (UNCAC). The Republic of Moldova acceded to this Convention through Law No.158-XVI of 6 July 2007 (O.G. No.103-106/20.07.2007), and it entered into force on 20 July 2007. UNCAC establishes a universal framework for preventing the abuse of power. In particular, Article 8 of the Convention emphasizes the crucial role of judicial integrity and provides that, in order to combat corruption, each State Party shall, in accordance with the fundamental principles of its legal system, promote integrity, honesty, and responsibility among public officials. At the same time, Article 10 stipulates that, taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take appropriate measures to enhance the transparency of its public administration, including, where appropriate, its organization, functioning, and decision-making processes. This requires states to promote integrity, honesty, and accountability among public officials through codes of conduct and control mechanisms. From this perspective, judicial review exercised by administrative courts is not merely an internal prerogative, but an instrument for implementing international commitments, ensuring that any administrative decision remains aligned with the principles of good governance and decision-making transparency promoted at the global level [7].

Another fundamental reference point in shaping administrative ethics standards is Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials. This international instrument establishes that public officials have the duty to act, in all circumstances, with integrity, impartiality, and loyalty, emphasizing that the exercise of discretionary power must be transparent and subject to control. From the perspective of judicial review, this Recommendation provides administrative courts with objective criteria for assessing the good faith of public officials. Thus, the judge is not limited to a purely technical analysis of the administrative act, but also examines whether the official's conduct has respected the spirit of public service, ensuring that personal interest has not prevailed over the public interest, in full accordance with European principles of good administration. Accordingly, the rigorous application of Recommendation No. R (2000) 10 by the courts of the Republic of Moldova directly contribute to the prevention of corruption, transforming abstract principles of ethics into concrete legal obligations, the non-compliance with which leads to the annulment of the act and the establishment of liability of the public official [8].

This standard of protection has been codified and expanded at the level of the European Union through Directive 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law. The Directive establishes the obligation of Member States to put in place secure reporting mechanisms and, crucial for judicial activity, prohibits any form of retaliation against whistleblowers. In the context of the Republic of Moldova, the transposition of the spirit of this Directive through the mechanisms of Law No.82/2017 provides administrative courts with an additional normative basis. Thus, judicial review no longer concerns only the formal legality of a sanction, but must also verify whether the administrative act does not, in reality, consti-

tute an institutional "reprisal" against the person who disclosed acts of corruption, thereby ensuring genuine protection of the integrity environment [9].

In the case *Vilho Eskelinen and Others v. Finland*, the European Court of Human Rights established the right of public officials to full judicial review, emphasizing that they are custodians of public trust. From the perspective of institutional integrity, this case is crucial, as it establishes that no administrative decision concerning the conduct of a civil servant may be exempt from judicial scrutiny. Thus, judicial review becomes the guarantor that integrity standards are applied objectively, eliminating the possibility that allegations of corruption or disciplinary sanctions may be used as instruments of political pressure or administrative arbitrariness. The *Vilho Eskelinen* judgment marked a paradigm shift in European case-law, establishing the presumption of applicability of Article 6 of the Convention to disputes involving public officials, except in cases where the State can demonstrate that access to justice would prejudice vital national interests. In the context of the fight against corruption, this standard obliges administrative courts to exercise full jurisdictional control, which entails not only a formal review of the external legality of the sanctioning act, but also a thorough examination of the factual basis of the allegations made against the public official [10].

For the Republic of Moldova, the case *Guja v. Moldova (2008)* has functioned as a fundamental judicial reasoning through which the European Court of Human Rights marked a paradigm shift in the relationship between public authority and subordinate, transforming the concept of "institutional loyalty" from an obligation of silence into a responsibility toward the public interest. In this case, the Court held that the reporting of irregularities within public institutions by employees constitutes a legitimate exercise of freedom of expression, especially where the information concerns acts of corruption or political pressure on the administration of justice. The Court established six essential criteria for determining the protection of a "whistleblower": the existence of a public interest in the disclosed information, verification of the authenticity of the information, the good faith of the author, the absence of effective alternative reporting channels, the damage caused to the institution, and the severity of the imposed sanction. Through this reasoning, the ECtHR enshrined the principle that an official's loyalty is not blind allegiance to the hierarchical superior, but rather loyalty to the state and to the citizen, imposing on national courts the obligation to exercise substantive judicial review capable of annulling any administrative retaliation disguised as disciplinary sanctions [11].

The case *Guja v. Moldova* represented the premise for the adoption of Law No.132/2016 on the National Integrity Authority, providing the necessary impetus for the transition from a symbolic control system to an institutionalized and independent one. This judgment of the European Court highlighted that, in the absence of an autonomous authority responsible for managing conflicts of interest and the assets of public officials, integrity mechanisms remain subject to political or hierarchical discretion. Thus, Law No.132/2016 transposes the legal necessity identified by the ECtHR into a rigorous normative framework, where the findings issued by integrity inspectors are subject to full judicial review. In this way, the court becomes the guarantor that the integrity verification process is not used as an instrument of pressure, but as an objective mechanism of the public system, in accordance with the standards established in the Strasbourg case-law. From this perspective, the law not only established an autonomous authority (ANI), but also redefined the role of judicial control, transforming the court into the ultimate guarantor of the balance between the rigor of integrity checks and the protection of the official's rights against any abuse of power [12].

Conclusions. The synthesis of the present research demonstrates that the fight against corruption finds its culmination and validation in the courtroom. Judicial review should not be perceived as a barrier to executive activity, but rather as an "integrity filter" necessary for the democratic "health" of the state. Corruption in the public system is not merely a simple deviation from ethical norms; it constitutes a systemic threat that undermines the very foundations of the rule of law and erodes citizens' trust in democratic institutions. The consequences of this phenomenon are multidimensional: economically, corruption leads to an inequitable distribution of public resources and discourages investment, while socially it deepens inequalities and compromises the quality of essential public services. Moreover, within the administrative framework, the presence of corrupt acts vitiates the decision-making process, replacing the public interest with group or personal interests, which results in a degradation of professionalism and the establishment of a culture of impunity. Thus, corruption becomes a major obstacle to sustainable development, transforming state authority into an instrument of illicit enrichment and destroying social cohesion through the perception that the law is not applied equally to all.

As a result of the analysis, it was found that the evolution of case-law has succeeded in redefining the loyalty of public officials: the primary duty of a civil servant is toward truth and the citizen. The legal framework established by Law No.132/2016 and Law No.82/2017 provides a solid structure; however, it remains vulnerable in the absence of rigorous judicial oversight capable of preventing the use of integrity checks as instruments of pressure.

The role of the administrative court goes beyond a mere review of compliance, becoming a guarantor of the balance between state authority and the rights of the citizen. In disputes concerning integrity, the administrative judge is the one who examines whether an administrative act was issued in the spirit of the law or whether it conceals an excess of power. Through the power to annul flawed decisions, the court not only restores the legal order but also eliminates the "administrative toxicity" that allows the perpetuation of corrupt acts.

The effectiveness of the anti-corruption fight is directly proportional to the depth of judicial review. The administrative court does not limit itself to examining formal elements, but exercises full jurisdictional control, assessing the proportionality and appropriateness of the measures imposed by authorities such as the National Integrity Authority (ANI). This mechanism ensures that no public official is sanctioned arbitrarily, while also guaranteeing that no serious breach of integrity norms remains unpunished due to minor procedural defects.

An essential aspect of judicial activity in this field is the creation of precedents that discourage unlawful behavior. Decisions of administrative courts draw clear boundaries between the legitimate exercise of powers and the abuse of authority. Through the rigorous reasoning of these solutions, the judge provides a code of conduct for the entire administrative apparatus, transforming each case into a lesson in public ethics and decision-making responsibility.

Moreover, the administrative court functions as a shield for whistleblowers, giving substantive effect to the legal protection guaranteed by national and international legislation. The judge is the one who must identify the causal link between an act of reporting corruption and a potential administrative retaliation disguised as a disciplinary sanction. Thus, by protecting the honest public official, the court strengthens the very structure of institutional integrity and resilience.

Judicial practice shows that the mere annulment of an act is not always sufficient to

eradicate systemic corruption phenomena, as a deeper analysis is required of how administrative authorities apply the principles of good administration. The challenges related to the administration of evidence in complex cases of favoritism or conflicts of interest require a refined filtering of the judicial examination methodology, so that the court's judgment becomes a genuine preventive precedent.

In conclusion, the role of judicial review in strengthening institutional integrity and preventing corruption among public officials goes beyond the technical function of legality control, asserting itself as a pillar of resilience of the rule of law in the Republic of Moldova. The administrative court not only sanctions individual breaches but also acts as an architect of public morality, transforming international standards into binding legal realities. In an administrative system undergoing continuous reform, the independence and rigor of the judge represent the ultimate guarantee that public power remains subordinated to the law, thereby ensuring an irreversible transition toward transparent, honest governance oriented exclusively toward serving the citizen.

Bibliographical references

1. Constituţia Republicii Moldova din 29.07.1994. În: Monitorul Oficial al Republicii Moldova, 12.08.1994, nr. 1.
2. Codul administrativ al Republicii Moldova nr. 116 din 19.07.2018. În: Monitorul Oficial al Republicii Moldova, 17.08.2018, nr. 309-320, art. 466.
3. Legea integrității nr. 82 din 25.05.2017. În: Monitorul Oficial al Republicii Moldova, 07.07.2017, nr. 229-243, art. 360.
4. Gheorghe Alexianu. Curs de drept constitutional. Vol. II, Bucureşti: Editura Casei Şcoalelor, 1931, 160 p.
5. Codul de conduită a funcționarului public nr. 25 din 22.02.2008. În: Monitorul Oficial al Republicii Moldova, 11.04.2008, nr. 74-75. art. 243.
6. Orlov M. Curs de contencios administrativ. Chișinău: Elena-VI S.R.L., 2009, 158 p.
7. Convenția Organizației Națiunilor Unite împotriva Corupției (UNCAC), adoptată la New York, la 31 octombrie 2003. Disponibil: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (vizitat 09.04.2026).
8. Recomandarea No. R (2000) 10 a Comitetului Miniștrilor Statelor Membre privind codurile de conduită pentru funcționarii publici, adoptată de Comitetul Miniștrilor, la 11 mai 2000, la cea de a 106-a sesiune. Disponibil: https://rm.coe.int/16806cc1ec (vizitat 09.04.2026).
9. Directiva (UE) 2019/1937 a Parlamentului European și a Consiliului din 23 octombrie 2019 privind protecția persoanelor care raportează încălcări ale dreptului Uniunii. Disponibil: https://eur-lex.europa.eu/eli/dir/2019/1937/oj (vizitat 09.04.2026).
10. Hotărârea CEDO în cauza Vilho Eskelinen și alții v. Finlanda (Cererea nr. 63235/00), 19 aprilie 2007. Disponibil: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-123078%22]} (vizitat 09.04.2026).
11. Hotărârea CEDO în cauza Guja c. Moldovei (Cererea nr. 14277/04) din 12 februarie 2008. Disponibil: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-2265%22]} (vizitat 09.04.2026).
12. Legea nr. 132 din 17.06.2016 cu privire la Autoritatea Națională de Integritate. În: Monitorul Oficial al Republicii Moldova, 30.07.2016, nr. 245-246, art. 511.

CZU 327 DOI: https://doi.org/10.5281/zenodo.20845818

GEOPOLITICAL TRANSFORMATIONS IN THE 21ST CENTURY: THE ROLE OF GREAT POWERS AND POLITICAL LEADERS

Ionuț-Robert CIOBĂNICĂ,
Police Officer,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0003-7025-3150

Abstract

This study analyzes the geopolitical transformations of the 21st century, with a focus on the role of great powers and political leaders in shaping contemporary international relations. In a context marked by intensifying strategic rivalries, persistent regional conflicts and global economic vulnerabilities, the international system is undergoing a period of transition towards a multipolar order.

The paper highlights the impact of major factors such as the wars in Ukraine and the Middle East, tensions in the Asia-Pacific region, competition for strategic resources and technological supremacy, as well as the fragility of global supply chains. At the same time, the effects of economic instability, climate change, migration and the accelerated development of artificial intelligence on international security and stability are analyzed.

A central element of the study is the analysis of the personality and leadership style of the main global actors, highlighting how their decisions influence the dynamics of the international system. The paper also examines current trends in the domestic and foreign policies of the great powers, as well as the relations between them, characterized by a fragile balance between competition and cooperation.

The study concludes that the evolution of the international order depends crucially on the ability of the great powers to manage these tensions and prevent the escalation of conflicts, in an increasingly complex and interdependent global context.

Keywords: multipolar order, international relations, great powers, political leadership, strategic competition, international security, regional conflicts.

GEOPOLITICAL TRANSFORMATIONS IN THE XXI CENTURY: THE ROLE OF GREAT POWERS AND POLITICAL LEADERS

Abstract

Prezentul studiu analizează transformările geopolitice ale secolului XXI, cu accent asupra rolului marilor puteri și al liderilor politici în configurarea relațiilor internaționale contemporane. Într-un context marcat de intensificarea rivalităților strategice, conflicte regionale persistente și vulnerabilități economice globale, sistemul internațional traversează o perioadă de tranziție către o ordine multipolară.

Lucrarea evidențiază impactul unor factori majori precum războaiele din Ucraina și Orientul Apropiat, tensiunile din regiunea Asia-Pacific, competiția pentru resurse strategice și supremația tehnologică, precum și fragilitatea lanțurilor globale de aprovizionare. În același timp, sunt analizate efectele instabilității economice, ale schimbărilor climatice, ale migrației și ale dezvoltării accelerate a inteligenței artificiale asupra securității și stabilității internaționale.

Un element central al studiului îl constituie analiza personalității și stilului de leadership al principalilor actori globali, evidențiind modul în care deciziile acestora influențează dinamica sistemului internațional. De asemenea, lucrarea examinează tendințele actuale din politica internă și externă a marilor puteri, precum și relațiile dintre acestea, caracterizate printr-un echilibru fragil între competiție și cooperare.

Studiul concluzionează că evoluția ordinii internaționale depinde în mod esențial de capacitatea marilor puteri de a gestiona aceste tensiuni și de a preveni escaladarea conflictelor, într-un context global tot mai complex și interdependent.

Cuvinte-cheie: ordine multipolară, relații internaționale, marile puteri, leadership politic, competiție strategică, securitate internațională, conflicte regionale.

Introduction. **I. Current Political Situation**. The beginning of 2026 highlights a significant intensification of the dynamics of international relations, characterized by an increasing number of events that are difficult to anticipate and manage.

The current instability is mainly generated by the persistence and escalation of major armed conflicts, such as the war in Ukraine, the Israel–Hamas conflict and the multiple civil wars in states such as Syria, Yemen or Sudan. These are amplified by economic vulnerabilities, internal political tensions and global challenges such as climate change and migration, high public debts [1]: USA 125% GDP, China 96% GDP, Japan 230% GDP, India 81% GDP, UK 103%, France 114% GDP, Italy 138% GDP, Germany 62% GDP; political instability in many states, climate crises (episodes of extreme heat, torrential rains, severe storms, prolonged drought, destruction of ecosystems: Amazonian Forest, Arctic Zone, Marine Ecosystems), massive migration (Europe being the most affected by the flight of the population from war-torn areas: Ukraine, Gaza, Iran, South Asian workers in search of jobs) or uncertainty surrounding the use of artificial intelligence.

Compared to previous periods, the global scene is marked by an acceleration of crises and an increase in their complexity.

II. Political Leaders: Factors of Instability in International Relations. Today's international political scene is defined by instability, high-stakes elections in 2026, and geopolitical tensions amplified by conflicts, economics, and climate change. Violent strikes and protests in Western Europe supported by Russia and the United States, at least declaratively and sometimes even financially, are helping to fuel the rise of far-right parties with anti-immigration, anti-Ukraine agendas that advocate distancing nation states from the European Union.

The outstanding personality of 2025 was the President of the United States, Donald Trump, one of the most active political figures worldwide. The inauguration of the second term as president of the country in January 2025, after a highly polarizing and internationally publicized campaign. In 2025, he stood out with tough policies on immigration and trade relations, to unconventional positions on the international stage — which generated *debate and reactions worldwide*, bringing him a central role in global political news.

Donald Trump is one of the most influential and controversial figures in contemporary international politics, frequently associated with right-wing populism and political nationalism. His leadership style differs from American political traditions in that it is direct, confrontational, and geared toward the emotional mobilization of the electorate. Coming from a business background, his political rise occurred outside a classic institutional path, which has significantly influenced the way he approaches both domestic politics and international relations. This perspective is reflected in a pragmatic and transactional vision of foreign policy.

From an ideological perspective, Donald Trump promotes the "America First" doctrine, which involves prioritizing the national interests of the United States in economic, political and strategic terms. This orientation translates into a critical attitude towards globalization, multilateral agreements and international institutions, in favor of state sovereignty and bilateral relations. His vision reflects a realist conception of international relations, focused on power relations and immediate benefits. Trump starts from a *transactional understanding of international relations*, influenced by his background as a businessman. He sees foreign policy as a series of negotiations between sovereign actors, in which each state must obtain a clear and immediate advantage. From this perspective, multilateral agreements are problematic because they involve complex compromises and diffuse benefits, while bilateral relations allow for direct pressure and results that are

easier to claim politically. Trump has also been consistently critical of globalization, which he sees as responsible for the loss of industrial jobs, the offshoring of production, and the decline of the American working class. Protectionist policies, withdrawal from certain trade agreements, and renegotiation of others have been presented as means to *regain economic control* and protect American economic interests.

Another important factor is *the distrust of international institutions* (UN, NATO, WHO, etc.), perceived by Trump as inefficient, costly and unfair to the US. He has frequently argued that the United States contributes disproportionately much, without receiving equivalent benefits, which runs counter to his idea of equity and strict national interest. Donald Trump has insisted on increasing the defense spending of NATO member states primarily for financial reasons. He argued that the United States bears a disproportionately large share of the costs of collective defense, while many European countries were not respecting the assumed objective of allocating a minimum of 2% of GDP to defense (Wales Summit Declaration adopted by the heads of state and government participating in the North Atlantic Council meeting in Wales, 4-5 September 2014). From this perspective, Trump considered the situation to be unfair to American taxpayers.

Another important reason was domestic politics. The "America First" message was central to his speech, and criticism of allies who "don't pay enough" resonated with his electorate. His insistence on reducing foreign financial burdens and holding allies accountable reinforced his image as a leader who defends the economic interests of the United States.

Last but not least, this orientation also had an *electoral and symbolic role*. The sovereignist, anti-elitist, and anti-globalist discourse resonated strongly with a significant portion of the American electorate, who felt marginalized by traditional establishment policies. By rejecting the internationalist consensus, Trump positioned himself as an "outside the system" leader, willing to defy existing norms.

Donald Trump's relationship with the electorate is based on the mobilization of social segments dissatisfied with the political establishment, especially the working class and conservative voters. The intensive use of mass media and social networks has allowed him to build a direct connection with his supporters, but has also contributed to the deepening of political and social polarization in the United States.

In terms of public policies, Trump supports measures to reduce taxes, strictly control immigration and protect domestic production. In foreign policy, he adopts a pragmatic and confrontational approach, characterized by economic pressure, tough negotiation and reassessment of traditional alliances. Overall, Donald Trump is a highly influential and controversial political figure, whose impact on the American political system and on the contemporary international order is significant.

Another prominent actor on the international stage is Vladimir Putin. He came to power through – a combination of a favorable political context, support from the security structures, and a transition orchestrated by his predecessor, Boris Yeltsin. The decisive moment was his appointment as primeminister in 1999 and then Yeltsin's sudden resignation, which transformed Putin into acting president. Putin worked in the KGB, then the FSB, where he became director in 1998. This position gave him visibility and the trust of the security elites. Putin consolidated his power in Russia through a gradual process, combining control of state institutions, reshaping the political system, and reducing the space for opposition. The essence of his strategy was to centralize authority and eliminate any alternative centers of influence.

Putin aims to restore Russia to superpower status. In his view, Russia cannot be-

come a major global player again without a strong, disciplined command center capable of rapidly mobilizing national resources. Therefore, the first step of his strategy was to rebuild a hypercentralized state, in which political decision-making is concentrated around the president, and institutions are subordinated to a "vertical of power" that eliminates regional autonomy and limits internal opposition.

This recentralization has allowed the Kremlin to control the economic elite, reduce the influence of independent oligarchs, and create a loyal administrative apparatus. By consolidating control over the media, the judiciary, and the security services, Putin has gradually eliminated any alternative source of power. In his political logic, a fragmented or pluralistic state cannot compete with the world's great powers, and internal stability is an essential condition for Russia's geopolitical ambitions.

Putin has built an external project aimed at restoring the influence lost after the collapse of the USSR. Russia is presented as an alternative pole of power to the West, capable of challenging the international order dominated by the US and the EU. Military interventions in Georgia, Syria and Ukraine, the modernization of the army and the use of energy resources as a geopolitical tool are expressions of this strategy. In parallel, the Kremlin promotes a *multipolar world*, in which Russia claims its role as a regional arbiter and indispensable global actor [2].

Putin's desire for Russia to become a superpower again rests on two complementary directions: total internal control and aggressive external projection. State centralization is not just a method of governance, but the foundation of a geopolitical project that seeks to reposition Russia at the center of major global decisions.

Putin can be characterized as an authoritarian leader who has consolidated power in his hands, reducing the influence of the opposition and controlling the media to promote a narrative favorable to his policies. His pragmatic approach to foreign policy, known as *realpolitik*, promotes a political *messianism* that focuses on Russia's national interests, and the use of military force reflects his willingness to achieve his goals by any means. In the Russian economy, Putin favors a model in which the state plays a central role, which has led to a dependence on natural resources and the perpetuation of corruption. His regime also places a strong emphasis on internal security, using security agencies to suppress dissent, while relations with the West have been strained, especially after the crisis in Ukraine and the sanctions imposed on Russia, with Putin presenting himself as a defender of the country against external aggression.

If Putin is known for his influence on Russia's foreign policy and for his role in redefining the country's position on the geopolitical stage, Xi Jinping is the central figure of the political leadership in the People's Republic of China and one of the main actors in the current global transformations. Thus, moving on from the analysis of Putin's leadership, it is important to also analyze how Xi Jinping leads China and contributes to increasing its influence worldwide.

Xi promotes a "Chinese path to modernization" that emphasizes political control, not liberalization unlike **Deng Xiaoping 's, even** making symbolic efforts to downplay Deng's historical importance in order to strengthen the legitimacy of the Xi era.

Xi Jinping's vision of domestic and international politics is presented coherently in his speeches and in the official doctrine called "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era" [3]. This doctrine has become the ideological core of the Chinese state and defines China's strategic direction today.

Domestically, Xi Jinping is relying on the consolidation the power of the Chinese Communist Party (CCP) as the absolute ruling force of the state. Analyses show that Xi

has reversed the gradual liberalization trend of the Deng Xiaoping era and reintroduced a much stronger role for ideology in public life and administration. Under this model, the party is present in all institutions – from private companies to universities – and loyalty to the CCP becomes an essential criterion for the promotion of officials.

Another central element is economic and technological modernization, with a focus on self-sufficiency in strategic areas such as semiconductors, artificial intelligence, and defense. Recent sources point out that Xi is promoting a strategy of "technological autonomy" to reduce dependence on the West and transform China into a technological superpower by 2035. On the social front, Xi emphasizes stability and security, which translates into extensive control over civil society, the media, and the internet. Highly visible anti-corruption campaigns have served to discipline the state apparatus, but also to eliminate political rivals. At the same time, Xi promotes traditional Chinese values as the moral foundation of society, in a combination of cultural nationalism and modern socialism.

Internationally, Xi Jinping aims to transform China into a central global actor, capable of shaping the international order. Analyses show that Xi does not seek direct confrontation, but a gradual reconfiguration of the global system in favor of Chinese interests, through economic diplomacy, multilateral initiatives and technological expansion.

In the context of US-China strategic competition, the China-Russia partnership is reciprocal: for China, Russia is indispensable as a source of natural resources and military technology; for Russia, China is the only viable partner capable of providing financial assistance in conflict and diplomatic support in the UN Security Council. This mutual dependence transforms the alliance into a geopolitical necessity for both actors, consolidating economic, military and diplomatic cooperation into a pragmatic and long-term strategic partnership.

China-Russia Boundless Partnership [4] is a comprehensive strategic alliance that encompasses economic (bilateral trade, long-term energy contracts), military and technological cooperation, as well as diplomatic alignment in international organizations. Forced by Western sanctions and a shared desire to counterbalance US influence, the partnership reflects complementarities between Russia's natural resources and China's technological capabilities and capital. Although officially presented as "boundless", the relationship has real limits imposed by international sanctions, strategic differences and an asymmetrical dependence, with Russia being more vulnerable than China. In essence, it is a pragmatic and adaptable cooperation based on shared geopolitical and economic interests, rather than a formal military alliance like NATO.

Xi does not necessarily aim to replace the US as the sole hegemon, but to create a multipolar world in which China is one of the central poles.

Another major pillar is the Belt and Road Initiative (BRI) [5], through which China is expanding its economic and strategic influence across Asia, Africa, the Middle East, and Europe. One of the main goals of the initiative is *to facilitate international trade*. By building ports, railways, highways, and energy pipelines, China aims to create faster and more efficient trade routes. These projects can reduce transportation costs and facilitate Chinese exports to global markets, while strengthening economic ties between participating states. At the same time, the initiative aims *to expand China's geopolitical influence*. By financing and developing infrastructure in numerous countries, China is strengthening its diplomatic relations and increasing its role in the economic development of other regions. This can lead to increased political and strategic influence for Beijing in the international system [6].

Another important goal is *to develop China's inland regions*, especially those in the west of the country, which are less developed than the coastal areas. By connecting these regions to international trade networks, the Chinese government is trying to stimulate investment, production, and job creation.

In parallel, Xi is promoting a more assertive foreign policy in the Asia-Pacific region, including in the South China Sea and in the relationship with Taiwan, where Beijing insists on "reunification" as a fundamental national goal.

In its relationship with the United States, Xi pursues a strategy of controlled competition, in which China seeks to avoid military conflict but consolidate its position in areas such as technology, trade, and diplomatic influence. Recent sources emphasize that technological tensions with the US are a central element of Xi's foreign strategy, which sees technological competition as a struggle for the future of the world order.

The European Union differs from the US, Russia and China primarily in its institutional nature and the way it exercises power: the EU is not a sovereign state, but a union of states that coordinate their policies through cooperation and consensus mechanisms, which makes the decision-making process more complex and slower, but more balanced. In contrast, the US, Russia and China are highly centralized states, capable of quickly adopting strategic decisions and implementing them in a unified manner. Internationally, the EU relies mainly on "soft power", i.e. economic influence, regulations, diplomacy and the promotion of democratic values, such as the rule of law and human rights, generally avoiding the use of military force. In contrast, the US combines economic power with an extensive global military capacity, Russia frequently uses instruments of force and aggressive geopolitical strategy to assert its influence, and China combines economic and technological expansion with a gradual increase in military power. Thus, the essential difference lies in the fact that the EU acts more as a "normative actor" and cooperative in the international system, while the other great powers operate as classic state actors, oriented towards competition and direct consolidation of power.

While the European Union focuses internally on strengthening the single market, social cohesion and the security of its citizens, these priorities cannot be separated from the external geopolitical challenges it faces. Thus, on the international stage, the EU must defend its economic and security interests through strategic trade relations, active diplomacy and a strong geopolitical stance, demonstrating that internal stability and external influence are complementary and interdependent.

The internal policy of the European Union is based on the idea of progressive integration between the Member States, with the aim of creating a common, stable and competitive economic and legal area. The Single Market is the core of this project: a framework in which goods, services, capital and people circulate freely, without internal barriers. To maintain the functionality of this area, the EU sets common standards in areas such as consumer protection, the environment, energy or competition, thus ensuring equal conditions for all economic actors. In parallel, cohesion policy aims to reduce development differences between regions, through massive investments in infrastructure, innovation and social development, so that the benefits of integration are distributed as evenly as possible.

Another essential pillar of internal policy is the protection of the rule of law, democracy and fundamental rights. The European Union considers these values to be fundamental to its functioning, which is why it constantly monitors their respect in all Member States. Mechanisms such as the annual rule of law assessments, the Article 7 procedures [7] or budgetary conditionality are tools through which the EU seeks to prevent demo-

cratic slippage and maintain the coherence of the Union's values. In addition, many internal policies such as those on migration, agriculture, energy or the environment have significant external effects, reflecting the interdependence between internal action and the EU's global role.

The European Union's foreign policy is built around the objective of promoting peace, stability and international cooperation. Through the Common Foreign and Security Policy, the EU seeks to act as a coherent global actor, capable of responding to international crises and contributing to maintaining a rules-based world order. The Union presents itself as a "normative actor", i.e. a promoter of democracy, human rights and multilateralism, using diplomacy, dialogue and cooperation as its main instruments of influence. The European External Action Service coordinates the EU's diplomatic relations, managing delegations around the world and representing the Union in international negotiations.

The principles of the European Union's foreign policy are based on the promotion of democratic values, based on respect for human rights, the rule of law and the principles of international law. An essential principle is multilateralism, through which the EU supports collaboration between states and the role of international organisations in managing global issues. The EU also promotes international peace and security, preferring diplomatic solutions and conflict prevention to the use of force. Another important principle is solidarity and cooperation, both among Member States and in relations with other countries, in particular through support for development and humanitarian aid. At the same time, the EU's foreign policy aims to protect economic and trade interests, but within a regulated and fair framework, and supports the promotion of democracy and European values globally.

Economically, the EU is one of the world's largest trading powers, and its common commercial policy allows it to negotiate free trade agreements with many countries and regions. In recent years, the Union has taken a more assertive approach to defending its economic interests, adapting to increased global competition. In the area of security and defence, the EU is gradually developing common capabilities through initiatives such as PESCO and the European Defence Fund, deploying civilian and military missions in conflict zones to contribute to stability. Migration policy is an area where the internal and external dimensions overlap: the EU works with third countries to manage migration flows, while seeking to harmonise internal rules on asylum and border protection.

III. Relationships between Global Actors. Relations between major global actors are characterized by a complex combination of strategic competition and selective cooperation, taking place in an increasingly unstable international context. The transition to a multipolar order determines a constant reconfiguration of power relations, in which states pursue their interests both through collaboration and confrontation. In this framework, economic interdependence coexists with geopolitical rivalry, which makes international relations difficult to predict and manage. This dynamic reflects the profound transformations of the contemporary global system.

The relationship between the United States and China is the central axis of global competition. The two powers are engaged in a complex rivalry that combines economic interdependence with strategic confrontation, particularly in areas such as technology, trade, and geopolitical influence. While they avoid direct conflict, tensions are evident in regions such as the Asia-Pacific and in the dispute for technological supremacy, as each seeks to consolidate its position in the world order. The relationship is currently the most important and tense bilateral relationship in the international system. The two powers

are engaged in a broad strategic competition that covers areas such as technology, trade, regional security, and global influence. The United States seeks to limit China's rise and protect the liberal international order it shaped after World War II, while China seeks to expand its economic and military power and consolidate its status as a superpower. Their rivalry affects global supply chains, regional alliances, and stability in sensitive areas such as Taiwan and the South China Sea. This relationship is considered the main driver of current geopolitical transformations.

Relations between the United States and Russia are deeply strained, particularly in the wake of the conflict in Ukraine. The United States, along with its Western allies, have imposed severe economic sanctions and provided political and military support to Ukraine, while Russia perceives these actions as a direct threat to its security. This confrontation reflects a broader geopolitical rivalry between the West and Russia, characterized by distrust and strategic competition.

The relationship between China and Russia has strengthened in recent years, becoming a strategic partnership based on shared interests, especially in opposition to the global influence of the United States. The two countries cooperate in economic, energy and diplomatic fields, supporting the idea of a multipolar world. However, this relationship is more pragmatic than one of formal alliance, and there are also imbalances, especially in favor of China.

The European Union maintains complex relations with these actors [8]. In relation to the US, the EU is a strategic ally, sharing common values and cooperating in areas such as security and the economy. At the same time, the EU is trying to develop strategic autonomy. Relations with Russia are tense and dominated by sanctions and political divergences, while the relationship with China is a mixed one: important economic cooperation, but also competition and concerns about security and political influence [9].

Overall, the current international system is characterized by a combination of rivalry and interdependence, in which great powers collaborate where they have common interests, but constantly clash for global influence and supremacy.

Conclusions. The analysis presented highlights the fact that the current international system is marked by a profound transition towards a multipolar order, in which competition between great powers and the influence of political leaders contribute to an unstable global environment.

In this context, in the sense defined by Henry Kissinger in his work *World Order*, the main challenge of the 21st century consists in building a stable international order, accepted by the great powers, in the face of major differences in values, interests and political models [10].

Analyzing international relations as simplistically and cynically as possible, we can anticipate a future on two axes. The world is not so clearly divided into two "parallel fronts", but rather functions as a complex network of interdependent relationships.

The US-China axis is indeed the main line of global competition, as it involves two superpowers competing for global economic, technological and geopolitical supremacy. In contrast, the EU–Russia relationship is more of a regional one, focused on European security, energy and influence in the Eastern neighbourhood, without the same capacity to structure the entire global system.

Based on these trends, it is possible that in the future we will witness the intensification of competition between the United States and China, especially in the field of technology and geopolitical influence, with the risk of major crises in sensitive regions such as Taiwan or the South China Sea. Also, the conflict between Russia and the West could

continue or even escalate, generating new security tensions in Europe and reinforcing the division of geopolitical blocs. At the same time, the partnership between China and Russia could become more solid, helping to shape a counterbalance to Western influence.

The future relationship between the United States and China can evolve in several directions, but it will most likely remain defined by an unstable balance between competition and cooperation. A first scenario is that of the *intensification of strategic rivalry*, in which the two powers will consolidate their separate economic and technological blocs, accelerating the process of "decoupling" in areas such as semiconductors, artificial intelligence and supply chains. In this context, the world could become increasingly fragmented, with states forced to choose between competing spheres of influence.

A second scenario is that of *controlled competition*, in which the US and China recognize each other's great power status and try to avoid direct conflict while keeping the rivalry within manageable limits. In this case, cooperation would continue in key global areas, such as climate change, financial stability, or arms non-proliferation, even if geopolitical and technological tensions persist.

The riskiest scenario is that of an *escalation of tensions*, especially in sensitive areas such as Taiwan or the South China Sea, where a military incident or diplomatic crisis could escalate into an open conflict with major global implications. Such a scenario would seriously affect the world economy, international security and political stability of many regions.

The rivalry between the United States and China can also be interpreted through the lens of the "Thucydides Trap" concept, formulated by Graham Allison. He argues that, throughout history, the rise of an emerging power and the reaction of a dominant power frequently lead to conflict. In this context, the competition between the United States and China reflects a similar structural dynamic, in which the risk of escalation derives not only from specific policy decisions, but also from systemic pressures of the global redistribution of power [12].

The European Union will face major challenges, having to strengthen its strategic autonomy, manage internal pressures generated by migration, economic instability and the rise of populist currents, but also to redefine its role on the global stage. At the same time, technological developments, especially in the field of artificial intelligence, as well as cyber threats and disinformation will become increasingly important factors in international relations, influencing both the security of states and the stability of societies.

The future relationship between the European Union and Russia is likely to remain marked by tension and distrust, at least in the medium term, in the context of deep political, strategic and value divergences. The most realistic scenario is to maintain a cold relationship, characterized by economic sanctions, limited dialogue and minimal cooperation only in strictly necessary areas, such as regional security or the management of global crises. In this context, the European Union will continue to strengthen its energy and strategic autonomy, reducing its dependence on Russia, while the latter will increasingly orient its foreign and economic policy towards Asia. Another possible scenario, but dependent on the evolution of the current conflicts and possible internal political changes, could involve a gradual resumption of dialogue and a partial normalization of relations. However, this would involve major compromises and rebuilding trust, a difficult and long-term process. In a more pessimistic scenario, tensions could escalate, leading to new security crises in Eastern Europe or to an even greater consolidation of rival geopolitical blocs.

Overall, the EU–Russia relationship will continue to reflect a confrontation between two different models of political organization and visions of the international order, which

makes the prospect of stable and extensive cooperation limited in the near future.

In broad terms, the future of the international order will depend on the ability of great powers to manage these tensions and avoid turning rivalries into open conflicts. In the absence of effective mechanisms for global cooperation, there is a risk that the current instability will intensify, leading to the emergence of regional or even global crises, which underlines the need for a balance between competition and cooperation in managing the challenges of the 21st century.

Bibliographical references

1. https://www.visualcapitalist.com/state-of-world-debt-in-2025.
2. Leadership: When Clear and Present Danger Meets a Crisis, DOI: 10.1007/978-3-031-69610-7_15.
3. https://www.idr.ro/publicatii/Xi_Jinping_thought.pdf.
4. https://www.reuters.com/world/xi-putin-hold-phone-call-ukraine-war-anniversary-state-media-says-2025-02-24.
5. https://greenfdc.org/belt-and-road-initiative-about.
6. Challenging the Liberal Order: A Neo-Realist Analysis of China's Belt & Road Initiative and U.S. Strategic Counter-Initiatives, DOI: https://doi.org/10.63878/cjssr.v3i2.1574
7. https://www.consilium.europa.eu/ro/policies/article-7-procedures.
8. Mearsheimer John J. The Tragedy of Great Power Politics. Updated Edition. New York: W.W. Norton, 2014, p.40-41.
9. Strategic Reflections for the EU and its Neighbours in an Era of AI Transformation and Multi Level Geopolitical Pressures, DOI: 10.2139/ssrn.6189340.
10. Contemporary Geopolitical Alignment in the Global South, DOI: 10.1007/978-3-031-81977-3.
11. Kissinger Henry. World Order. Penguin Press, 2014, p.5.
12. Allison Graham. Destined for War: Can America and China Escape Thucydides's Trap? Houghton Mifflin Harcourt, 2017, p.29.

CZU 336.711(478) **DOI: https://doi.org/10.5281/zenodo.20845933**

THE INSTITUTIONAL DYNAMICS OF THE NATIONAL BANK OF MOLDOVA IN THE CONTEXT OF EUROPEAN INTEGRATION

Ludmila GUȘTIUC,
PhD, University Lecturer,
Public Law Department,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID – 0000-0002-8516-4949

Abstract
The institutional dynamics of the National Bank of Moldova (NBM) reflect its evolution from a traditional monetary authority to a modern institution, aligned with European standards. Created in the political context, following the achievement of state independence, the National Bank of Moldova occupies the main role in the country's economy. Throughout the evolution of the Moldovan banking system, for over 30 years, the NBM has demonstrated countless times that it represents a fundamental institution of society. The National Bank of Moldova has established itself as a symbol of national sovereignty. The National Bank of Moldova, being a pillar of state independence, now exercises complex powers of central authority over the national banking sector.
Keywords: central bank, National Bank of Moldova, national banking system, European Integration of the Republic of Moldova.

DINAMICA INSTITUȚIONALĂ A BĂNCII NAȚIONALE A MOLDOVEI ÎN CONTEXTUL INTEGRĂRII EUROPENE

Abstract
Dinamica instituțională a Băncii Naționale a Moldovei reflectă evoluția acesteia de la o autoritate monetară tradițională către o instituție modernă, aliniată standardelor europene. Creată în contextul politic, în urma obținerii independenței statale, Banca Națională a Moldovei ocupă rolul principal în economia țării. De-a lungul evoluției sistemului bancar moldovenesc, timp de peste 30 de ani, Banca Națională a Moldovei a demonstrat de nenumărate ori că reprezintă o instituție fundamentală a societății. Banca Națională a Moldovei s-a constituit ca simbol al suveranității naționale. Banca Națională a Moldovei, fiind un pilon al independenței statale, exercită acum atribuții complexe de autoritate centrală asupra sectorului bancar național.
Cuvinte-cheie: bancă centrală, Banca Națională a Moldovei, sistem bancar național, integrarea europeană a Republicii Moldova.

Introduction. In what follows, we will conduct scientific research on the aspects of the evolution of the National Bank of Moldova in the context of European integration. Until the accession of the Republic of Moldova to the European Union, the National Bank of Moldova has an important role in terms of its institutional dynamics. Respectively, the National Bank of Moldova:

- Ensures the economic stability of the country and aligns the national banking legislation with the norms of the European Union and good European practices;
- Participates in various legislative and functional reforms of the state;
- Is involved in the mechanisms for coordinating our country's accession to the

European Union and participates in negotiations with it.

Methods and materials applied. The scientific work was carried out using a set of research methods, including: *the documentary analysis method*: used to study the banking legislation of the Republic of Moldova and the European Union and review the specialized literature on the activity of the National Central Bank and European integration; *the comparative analysis method*: used to compare the legislation of the European Union and the legislation of the Republic of Moldova; and *the logical analysis method*: used to delimit the key concepts regarding the banking system. The use of these research methods contributes to facilitating the formulation of scientific conclusions.

Discussions and results obtained. The central bank is of vital importance in ensuring the stability of the value of the national currency. "In general terms, a central bank acts as an institution, on behalf of the state, to establish and coordinate the monetary and credit policy of the economy" [10, p.44]. We would like to clarify that a central bank has specific functions, the central bank does not exercise the functions of a commercial bank, and therefore, the central bank cannot compete with other banks in the national banking system. The central bank "as the state's bank of issue, an expression of the state's independence obtained over time, has acquired several functions and powers in the context of a bank of banks, specific to such an institution" [24, p.93].

Referring to the legal status of the central bank, from a comparative perspective, the French author Pierre Tifine argues that: "resulting from all the legislative provisions, the Central Bank of France is a "sui generis" public person and the function of centralizing information or banking files of enterprises constitutes a public administrative service mission that does not maintain any category of operations subject to civil and commercial legislation by virtue of Article 21 of the Law of 4 August 1993" [26]. "It is thus considered that the Bank of France, which, before France's entry into the Economic and Monetary Union, was recognized as a public institution with an administrative character, placed directly under the tutelage of the Prime Minister, starting with 1997 could no longer be qualified in the same way, since it is no longer considered to be under the tutelage of any French administrative authority, becoming a "sui generis" legal person" [8, p.120].

In Romania, Law No.34/1991 on the statute of the National Bank of Romania provided that "The National Bank of Romania is a state body and has legal personality" [15]. It was not until 2004 that Law No.312/2004 on the Statute of the National Bank of Romania referred to the National Bank of Romania as "an independent public institution" [16]. "It was emphasized, therefore, that the registration of the bank in the 2004 law as an independent public institution is intended to exclude any approximation of the central bank to the notion of a state body" [8, p.120].

In the Republic of Moldova, according to the legal provisions, more precisely of Law No.548 of 21.07.1995 on the National Bank of Moldova, "The National Bank is an autonomous public legal entity" [17]. Analyzing the legislation of several states regarding the activity of the central bank, we find that the Romanian legislator was the most skillful in clearly rendering the legal status of the central bank.

In the view of professors S.J. Bytheway and M. Metzler, "today, the actions of the central bank continue to develop the economy, perhaps even more than they did a century ago" [4, p.18]. The Romanian author L.C. Ionescu also highlights the role of the central bank, stating that: "the central bank has a special role in maintaining the stability of the national currency and public confidence in banks" [12, p.71].

In accordance with Article 1 of the Law on the National Bank of Moldova, entitled "The Legal Status of the National Bank of Moldova", "The National Bank of Moldova (equiv-

alent name – the National Bank) is the Central Bank of the Republic of Moldova" [17]. Accordingly, it follows that "the fundamental objective of the National Bank of Moldova is to ensure and maintain price stability" [14]. And by achieving this goal, the National Bank of Moldova should gain the trust of citizens. "Without prejudice to its fundamental objective, the National Bank promotes and maintains a financial system based on market principles and supports the general economic policy of the state" [1, p.28]. Accordingly, to achieve its fundamental objective, the National Bank of Moldova has the competence provided for in Art.3 of the Law on the National Bank of Moldova: "a) concluding contracts and issuing obligations; b) acquiring and disposing of movable and immovable property for the purpose of exercising its powers; c) filing actions in court and participating in the trial as a subject".

"In its activity, the National Bank of Moldova is not a closed institution, but is permanently in collaborative relations with the public, the Government and the Parliament. It should be noted that these relations do not in any way affect the autonomy of the National Bank of Moldova, stipulated in Article 1 of the Law on the National Bank of Moldova" [10, p.145]. When we talk about the relationship of the National Bank of Moldova with the public, we mean informing the public about the evolution of the financial market, various statistical data, information on the granting of loans, etc. This information is placed on the website www.bnm.md, which is the official page of the National Bank of Moldova.

Referring to the relations of the National Bank of Moldova with the Government, we note that: "The National Bank cooperates with the Government in achieving its objectives and undertakes the necessary actions to achieve such cooperation. The National Bank provides the economic and financial bodies of the Government, at their request, with information on monetary and financial issues" [17]. And in the situation where the National Bank requests information on monetary and financial issues, the economic and financial bodies of the Government are obliged to present them. Also, regarding the cooperation of the National Bank with the Government, "The Governor of the National Bank may attend and speak at the meetings of the Government, the address being recorded in the minutes and may present in writing opinions on the issues addressed following participation in the meetings" [17].

Regarding the relations of the National Bank of Moldova with the Parliament, the Moldovan legislator establishes that "The National Bank is an autonomous public legal entity and is accountable to the Parliament" [17]. Also, at the request of the Parliament, the National Bank is obliged to approve draft laws that target the areas of activity of the central bank. The policy of the National Bank is explained to the Parliament by the Governor of the National Bank, members of the Supervisory Council or members of the Executive Committee.

The relations between the Parliament of the Republic of Moldova and the National Bank of Moldova do not represent relations of subordination. The great scholar in the field of administrative law, A. Iorgovan, argues that: "administrative subordination, in an organic sense, implies: a) the right to organize the lower authority; b) the right to transmit mandatory instructions to it; c) the right to general supervision of the activity; d) the right to appoint leaders; e) the right to hold accountable by applying administrative-disciplinary sanctions; f) the right to control the activity with the possibility of annulling the acts" [13, p.80]. In this sense, in the case of the relationship established between the Parliament and the central bank, it is of a coordinating nature.

The cooperation between the Parliament of the Republic of Moldova and the National Bank of Moldova is based on the presentation of periodic reports and hearings. The

National Bank of Moldova is obliged to submit periodic reports to the Parliament on the state of the economy and monetary policy. At the same time, the National Bank of Moldova is called for hearings in order to provide additional information to parliamentarians.

Depending on the form of ownership, there are three types of central banks:

• Public banks, in which the capital belongs to the state;

• Joint-stock companies, in which the capital belongs to banks; and

• A symbiosis between the two types named above, in which the capital belongs to both the state and banks. According to this classification, the National Bank of Moldova belongs to the first category, namely, it is a public bank, the capital belongs to the state.

"Based on the attributions of the NBM, the specialized literature attributes to it several qualities, namely:

• Public authority;

• State bank;

• Bank of banks;

• Currency regulation center" [1, p.30].

By carefully analyzing the organizational chart, we find that the National Bank of Moldova, as an autonomous administrative authority, is made up of departments, directions, services and other subdivisions.

With reference to the banking sector, on August 28, 2015, the Official Gazette of the Republic of Moldova published Law No.147 of 30.07.2015 amending and supplementing certain legislative acts.

According to the legal provisions of the Law on the National Bank of Moldova as amended, "The National Bank and the members of its management bodies are independent in the exercise of the powers established by this Law and may not request or accept instructions from public authorities or any other authority. Public authorities, as well as any other authorities, shall not attempt to influence the members of the management bodies of the National Bank of Moldova in the exercise of their powers" [17].

Composition of the management bodies, the manner of appointment and dismissal of their members. According to Article 22 of the Law on the National Bank of Moldova, the management of the bank is ensured by:

– "The Supervisory Council, which is the body responsible for organizing an effective system of independent public supervision of the activity of the National Bank;

– The Executive Committee, which ensures the independent implementation of its basic attributions" [17].

At the proposal of the President of the Parliament, the Parliament of the Republic of Moldova appoints the Governor of the National Bank. Subsequently, at the proposal of the Governor of the National Bank, the Parliament appoints the First Deputy Governor and the Deputy Governors.

Candidates for the position of member of the Supervisory Board and the Executive Board must be citizens of the Republic of Moldova, have higher education, have an impeccable reputation, and have no records of a negative result of the professional integrity test in their professional integrity record in the last 5 years. "In the case of a candidate for the position of member of the Supervisory Board, he/she has at least 10 years of work experience in the financial, legal or audit field or in a scientific or academic position in these fields or, in the case of a candidate for the position of member of the Executive Board, he/she has at least 10 years of work experience in the financial or monetary field" [17]. The Parliament of the Republic of Moldova has the right to dismiss a member of the Supervisory Board or the Executive Board. The Chairman of the Supervisory Board is

dismissed upon the proposal of the President of the Parliament, by a vote of 2/3 of the number of elected deputies. The dismissal of the other members of the Supervisory Board and the Executive Committee shall be made upon the proposal of the Supervisory Board, submitted following the Governor's request, with the vote of the majority of the elected deputies. The decision to dismiss a member of the Supervisory Board or a member of the Executive Committee may be appealed to the Chisinau Court of Appeal within 15 days of its publication in the Official Gazette of the Republic of Moldova.

"It should be noted that, on the date of entry into force of this reform, the members of the Board of Directors of the National Bank of Moldova became ex officio members of the Executive Committee of the National Bank of Moldova, according to the mandates of Governor, First Deputy Governor and Deputy Governor held until their expiration. The members of the Board of Directors of the National Bank of Moldova, according to the mandates of Governor and First Deputy Governor, became the President and, respectively, Vice-President of the Supervisory Board until the expiration of their mandates" [11, p.124].

Within the meaning of the Law on the National Bank of Moldova, the Governor is responsible for formulating initiatives in the field of monetary and foreign exchange policy to be submitted to the Executive Committee and for their execution [17]. The Governor is also the one who heads the National Bank of Moldova. The Governor represents the national central bank in relations with any natural or legal person. Other rights of the Governor of the National Bank of Moldova provided for by the legislation in force are: issuing orders and provisions binding on employees of the domestic central bank, verifying their execution, signing agreements and other acts concluded by it.

With reference to the powers of the local central bank, "The National Bank of Moldova develops and implements monetary and foreign exchange policy within the framework of the state's single economic policy, arising from the need to create favorable conditions for achieving the proposed goals" [21, p.267]. According to Article 17 of the Law on the National Bank of Moldova, "The National Bank of Moldova establishes the requirements for banks to maintain mandatory reserves against deposits and other similar liabilities, specified for this purpose. These reserves are maintained by holding cash on hand or in correspondent accounts of banks or in special accounts of banks with the National Bank [17].

Another competence of the central bank is to grant loans to banks. Thus, according to Article 18 of the Law on the National Bank of Moldova, "The National Bank may grant loans to banks under the conditions periodically established by the National Bank and secured by: a) securities issued by the Government; b) securities issued by the National Bank; e) deposits and other accounts with the National Bank or with a bank accepted by the National Bank, representing any type of assets that the National Bank may purchase, sell or negotiate; f) other eligible financial assets established by the National Bank" [17].

With regard to foreign exchange operations, "The National Bank has the right: a) to buy, sell and negotiate gold coins, gold bars and other precious metals; b) to buy, sell and negotiate foreign currency, using the assets indicated in Article 53 paragraph (1); c) to buy and sell treasury bills and other securities issued or guaranteed by foreign governments and international public financial institutions; d) to establish the rate at which it will buy, sell and carry out the operations mentioned in letters a)–c)" [17].

For the purposes of Article 107 paragraph (2) of the Constitution of the Republic of Moldova, the National Bank of Moldova has the legal nature of an administrative authority. Thus, "For the purpose of leading, coordinating and exercising control in the field of economic organization and in other fields that do not fall directly within the competence

of the ministries, other administrative authorities shall be established, in accordance with the law" [5].

For comparison, in Romanian specialized literature, since 1996, professor A. Iorgovan included the National Bank of Romania among the autonomous central authorities [13, p.525]. Also, in 2004, professor L. Bercea qualified the National Bank of Romania as an autonomous administrative authority [2, p.83]. "In the same sense, other authors showed, in 2008, that the legal definition of the NBR as an "independent public institution" could lead to an erroneous conclusion in the sense of removing it from the ranks of public administration authorities, although such a definition was necessary to emphasize the lack of dependence on the political factor" [22, p.125]. It was thus specified that "the interpretation in the sense of a sui generis status of the bank, of a public institution outside administrative control cannot be admitted" [24, p.304]. Therefore, in general, the authors of administrative law include the National Bank of Romania among the autonomous administrative authorities [27, p.309].

In the Republic of Moldova, there are two categories of autonomous central authorities:

– Those created by the Constitution of the Republic of Moldova;

– Those that are not mentioned in the Constitution of the Republic of Moldova.

"In their creation, the basic role usually falls to the Parliament, which is why these authorities are subject to special parliamentary control" [19, p.388].

Since no article or paragraph in the Constitution of the Republic of Moldova was dedicated to the National Central Bank of Moldova, we consider that the National Bank of Moldova belongs to the second category of autonomous administrative authorities.

Professor A. Dumitrescu-Pasecinic argues that: "the solution to the problem of the legal nature of the bank should not be sought in the qualification given by the law..., but in its independent position and prerogatives of public power. French legal literature expressed a similar idea when it showed that the Law of January 3, 1973 qualified the Bank of France as an "institution", a term without legal significance" [8, p.122]. According to the Law of August 4, 1993 "the Bank of France remained "an institution whose capital belongs to the State" (article 6) so that the law did not define the legal nature of the "Banque de France institution" [3, p.157]. Regarding the independence of the National Bank of Moldova, this topic is developed in detail in the following paragraph.

The author A. Dumitrescu-Pasecinic considers that the central bank is a public authority, emphasizing that "if the central bank is a public authority and enjoys independence, the question arises of its classification in the categories of public authorities provided for in the Constitution..." [8, p.124].

In his valuable work, I. Silberstein argues that the central bank "is not a body of public administration and is not even included among the state bodies..." [24, p.305-306]. We do not share the same opinion with Professor I. Silberstein, since "the statement that the central bank is not a body of public administration seems to confuse the sphere of public administration with the sphere of government administration" [8, p.124]. In this context, if we refer to the independence of the National Bank of Moldova, this principle determines that the National Bank should not be part of institutions that are subordinate to the Government.

In the context of the above, the question arises "what kind of authority is the National Bank of Moldova on the national stage"? In our opinion, since 1991, the National Bank of Moldova, as a legal entity, was and is a state body. We believe that the notion of "state body" does not necessarily mean subordination to the Government. Institutional

independence refers to the idea that "the monetary authority is an independent body, it is not part of the government administration" [25, p.162]. However, the fact that the National Bank of Moldova is not part of the institutions subordinate to the government does not mean that it is not part of the public administration. Accordingly, we conclude that the National Bank of Moldova is an independent administrative authority.

On September 1, 2015 at the European Central Bank Conference, professor M. Selmayr, being the Chief of Staff of the Presidential Commission, is of the opinion that central banks occupy a separate power in the state [23]. We certainly state that the central bank cannot be part of the judicial, legislative or executive power, because the central bank, like the executive, serves the people by exercising a specialized obligation – ensuring financial stability in the state for the good of the citizen.

"Autonomous administrative authorities... are included in the sphere of executive power, exercising an executive activity, having as its object the organization of the application and concrete application of laws, as well as ensuring the proper functioning of the services established within them" [7, p.326]. These institutions are not part of the executive.

Unlike the Constitutional Court or the People's Advocate, which have the role of supporting citizens, the National Bank of Moldova does not play the role of guarantor. "As professor A. Iorgovan also shows, since the political power is only one, and the functioning of the state mechanism in which it is organized, since the interwar period has exceeded the rigid framework of the trinity of powers, the trinity of powers would have become a brake on the regulation of border institutions such as the People's Advocate or the Constitutional Court which, strictly speaking, do not fall within the sphere of any of the classical powers" [8, p.134].

We believe that the National Bank of Moldova, as an autonomous administrative authority, exercises an activity similar to the executive branch, but is in no way a component part of any power in the state.

A few years ago we were present in the midst of major events. We bear in mind that on June 23, 2022, the Council of Europe gave the green light to the Republic of Moldova, granting it the long-awaited and coveted status of candidate country for accession to the European Union. With reference to the banking sector, the significance of the event had several variables. We believe that the immediate advantages were best articulated by Mr. Janis Mazeiks, former Head of the European Union Delegation to the Republic of Moldova. Among other things, he stated that: "The European Union is committed to supporting structural reforms that bring impactful benefits to the Republic of Moldova, its citizens and business communities. The country's financial sector was significantly affected by the banking fraud of 2014. This was caused by an insufficiently strong legal and governance framework of the sector, high-level corruption and personal interests...." [20].

In this context, the mission of the banking system of the Republic of Moldova, among many others, is to adapt to new realities, study the legislation and practice of the European Union in the banking field and transpose into the legislation of the Republic of Moldova everything that the European Union has produced in the banking dimension. All this will bring institutional efficiency and advantages, ultimately, to the citizen and legal entities.

As a result, in recent years the following directives and regulations of the European Union have been transposed into the legislative segment of the banking regulation of the Republic of Moldova:

1. Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions. This Directive regu-

lates issues concerning the competition of laws between Member States of the European Union when credit institutions close (wind up) subsidiaries in countries other than the country of origin of the parent company [6, p.487].

2. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. According to the provisions of the Directive, "the promotion of the regulatory act contributed to ensuring financial stability and the protection of depositors, policyholders and investors. Supplementary supervision was exercised by a coordinating authority designated from among the authorities competent for sectoral supervision, on the basis of the criteria established by the Directive" [9, p.124]. However, although this directive has been transposed into national banking legislation, the European Parliament and the Council of the European Union adopted in 2023 Directive 2023/2864 amending certain directives as regards the establishment and operation of the European single access point, the purpose of which is to provide for a possibility of improving public access to financial and non-financial information by creating a European single access point. Therefore, in accordance with point 13 of Directive 2023/2864, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate is to be amended.

3. Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No.648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, known as the Anti-Money Laundering Directive IV, is one of the most important pieces of legislation in terms of combating money laundering and terrorist financing within the European Union. The essence of Directive 2015/849 is to establish a common regulatory and supervisory framework in the European Union for combating money laundering and terrorist financing with the aim of promoting the integrity and stability of the European financial system.

4. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions is a directive that regulates the activity of electronic money institutions and associated payment services within the European single market. Through Directive 2009/110/EC, the European Union aims to promote competition in the payment services sector, while ensuring the protection of users' funds and the stability of financial markets.

5. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market is known as the Payment Services Directive. Directive 2007/64/EC is an important piece of legislation governing the provision and use of payment services in the European single market. The role of this directive is to create a common regulatory and supervisory framework for payment services in order to promote innovation and protect consumers.

6. Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems is one of the first European directives to regulate the field of payments in the European single market. The importance of this directive is demonstrated by the establishment of common rules for transfers of funds between financial institutions.

7. Directive 2013/36/EC of the European Parliament and of the Council of 26 June

2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and Regulation No.575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No.648/2012 is part of the European Union legislative framework for the regulation and supervision of the banking and financial sector. This directive is an important part of the reforms following the 2008-2009 financial and economic crisis and aims to strengthen financial stability by setting sound capital requirements for credit institutions and financial institutions.

8. Regulation (EU) No.575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No.648/2012 is known as the Capital Requirements Regulation. Regulation (EU) No.575/2013 is part of the European Union legislative framework governing the banking and financial sector. This regulation is intended to ensure consistency and uniformity in terms of capital requirements for credit institutions in the European Union.

9. Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2004/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU of the European Parliament and of the Council and Regulations (EU) No.1093/2010 and (EU) No.648/2012 of the European Parliament and of the Council was adopted in the wake of the financial crisis to establish a common framework for action for the recovery and resolution of credit institutions in financial difficulties. It aims to ensure financial stability and protect taxpayers against systemic risks in the banking and financial sector.

In the current conditions of the Republic of Moldova, a special contribution to the country is the Manual on Harmonization of Legislation as a Key Element for the Success of the Process of Integration of the Republic of Moldova into the European Union [18]. Article 449 of the Association Agreement between the Republic of Moldova and the European Union provides for the dynamics of harmonization of the legislation of the Republic of Moldova with the Community acquis. The authors of the above-mentioned manual argue that: "This dynamic nature of the process of implementing the Association Agreement between the Republic of Moldova and the European Union stems from the dynamic nature of the EU acquis. The European Union acquis is constantly evolving, sometimes at a slow pace, sometimes with large leaps, which bring significant changes, which means that the acquis is constantly subject to amendments or repeals in accordance with the new needs of the European Union Member States, experiences and/or technological progress" [18].

Conclusions. In conclusion of the arguments mentioned above and starting from the objectives that we set out to achieve by elucidating this scientific study, we come up with a masterful statement. The institutional dynamics of the National Bank of Moldova have been elucidated, including by showing the evolution of the Europeanization-harmonization of national banking legal relations, starting from the Association Agreement between the Republic of Moldova and the European Union and reaching the Pre-Accession Plan of the Republic of Moldova to the European Union 2024-2027.

Between these two time frames, the banking system of the Republic of Moldova has experienced development, ascension, harmonization and efficiency, even if the process was somewhat overshadowed by the occurrence of banking fraud. We appreciate the re-

forms and modernization felt by individuals (both individuals and legal entities) and share the nation's optimism that the causes and conditions that could lead to new banking fraud have been eliminated, if political actors become characters lacking integrity and greedy for illicit enrichment.

Bibliographical references

1. Armeanic A., Cojocaru V. Drept bancar. Chișinău: Tipocart Print, 2023. 154 p. ISBN 978-9975-3594-0-5.
2. Bercea L. Drept bancar. Studii. București: Universul Juridic, 2014. 286 p. ISBN 978-606-673-326-7.
3. Blancheton B. L'Autonomie de la Banque de France de la Grande Guerre à la Loi de 4 d'Août 1993. En: Revue d'economie financière, nr. 1, 2014. pp. 157-178. ISBN 978-291-69 20-62-7.
4. Bytheway S.J., Metzler M. Central banks and gold: How Tokyo, London and New York shaped the modern world. 1st Edition. Ithaca and London: Cornell University Press, 2016. 260 p. ISBN 978-1-5017-0494-9.
5. Constituția Republicii Moldova, adoptată la 29.07.1994, intrată în vigoare la 27.08.94.
6. Costaș C.F., Tofan M. Drept financiar. București: Ed. Enciclopedică, 1997. 737 p. ISBN 978-606-39-1201-6.
7. Drăganu T. Drept constituțional și instituții politice. București: Ed. Lumina Lex, 1998. 368 p. ISBN 978-973-588-052-0.
8. Dumitrescu-Pasecinic A. Regimul juridic al Băncii Naționale a României de la înființare până în prezent. București: Ed. Universul Juridic, 2022. 641 p. ISBN 978-606-39-0924-5.
9. Gheorghe C.A. Drept bancar comunitar. București: Ed. C.H. Beck, 2008. 247 p. ISBN 978-973-115-238-7.
10. Guștiuc A. Drept bancar. Vol. I. Chișinău, 2002. 284 p. ISBN 9975-930-40-9.
11. Guștiuc A., Guștiuc L. Impactul ultimelor modificări ale cadrului legal în domeniul financiar-bancar asupra eliminării pericolelor de securitate națională. În: Materiale ale mesei rotunde cu participare internațională, consacrate Zilei internaționale a drepturilor omului din 11 decembrie 2015, „Rolul instituțiilor democratice în asigurarea protecției drepturilor omului". Chișinău: Tipogr. "Garomont-Studio", 2016. pp.115-125. ISBN 978-9975-115-99-5.
12. Ionescu L.C. Băncile și operațiunile bancare. Ed. Economica, 1996. 528 p. ISBN 973-9198-54-6.
13. Iorgovan A. Tratat de drept administrativ. Vol. I. București: Ed. Nemira, 1996. 537 p. ISBN 973-9177-96-4.
14. Istoria BNM. Disponibil: https://bnm.md/ro/content/istoria-bnm (citat 04.04.2026).
15. Legea nr.34 din 29 martie 1991 privind Statutul Băncii Naționale a României. În: Monitorul Oficial nr. 70 din 3 aprilie 1991, nr. 70.
16. Legea nr.312 din 28 iunie 2004 privind Statutul Băncii Naționale a României. În: Monitorul Oficial nr. 582 din 30 iunie 2004, nr. 582.
17. Legea nr. 548-XIII din 21.07.95 cu privire la Banca Națională a Moldovei. În: Monitorul Oficial al Republicii Moldova, nr. 297-300, 2015, art. 544. (republicată).
18. Medak V., Vehar P. Manual Armonizarea legislației ca element cheie pentru succesul procesului de integrare a Republicii Moldova în Uniunea Europeană. Disponibil: https://eu4moldova.eu/ro/manual-armonizarea-legislatiei-ca-element-cheie-pentru-succesul-procesului-de-integrare-a-republicii-moldova-in-uniunea-europea-

na/ (citat 06.04.2026).
19. Negru B., Osmochescu N., Smochină A. Constituția Republicii Moldova: comentariu. Coord. Klaus Sollfrank. Chișinău: Ed. ARC, 2012. 576 p. ISBN 978-9975-61-700-0.
20. Republica Moldova continuă modernizarea sectorului financiar cu suportul Uniunii Europene. Disponibil: https://www.cnpf.md/ro/republica-moldova-continua-modernizarea-sectorului-financiar-cu-suportul-uniunii-6307_93335.html#! (citat 06.04.2026).
21. Roșca Gh. Oportunități privind integrarea sistemului bancar național în sistemul bancar european. În: Competitivitatea economiei naționale în contextul procesului de globalizare internațională. Conferința științifico-practică internațională din 2-3 noiembrie 2012. Chișinău: USM, 2012. pp. 265-272. ISBN 978-9975-7198-9.
22. Sabău-Pop I., Hodoș R.F. Câteva considerații asupra naturii juridice a răspunderii Băncii Naționale a României în cazul unor norme de ordin tehnic. Revista Transilvană de Științe Administrative, 1 (21)/2008. pp.125-130. ISSN 1454-1378.
23. Selmayr M. Keynote Speech – How political are the institutions of Economic and Monetary Union? In: ECB Legal Conference 2015 – From Monetary Union to Banking Union, on the way to Capital Markets Union. New opportunities for European integration, p. 264. Available: https://www.ecb.europa.eu/pub/pdf/other/frommonetaryuniontobankingunion201512.en.pdf.
24. Silberstein I. Banca Națională a României. De la organ al administrației centrale la instituție publică independentă. București: Ed. Hamangiu, 2006. 335 p.
25. Smits R. The European Central Bank, institutional aspects. Kluwer Law International, 1997.
26. Tifine P. La Banque de France, personne publique sui generis. Commentaire sous le jugement TC 16 juin 1997. Epoux Muet Société la Fontaine de Mars e a c/Banque de France no. 03054. Revue générale du droit online, 2008. Available: https://www.revuegeneraledudroit.eu/blog/2008/01/09/la-banque-de-france-personne-publique-sui-generis/ (citat 19.04.2026).
27. Tofan D.A. Drept administrativ. București: Ed. All Beck, 2003. 322 p. ISBN 973-655-401-5.
28. Ungureanu D. Politici și instituții financiar-bancare europene. București: Ed. Universitară, 2014. 365 p. ISBN 978-606-591-925-9.

CZU 342.9:343.346 **DOI: https://doi.org/10.5281/zenodo.20846268**

CONTRAVENTION LIABILITY OF LEGAL PERSONS IN THE FIELD OF ROAD TRAFFIC: ISSUES OF QUALIFICATION AND APPLICATION

Doinița ȚÎMBALARU,
PhD Candidate, University Assistant,
Department of Private Law,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID ID 0009-0002-7359-0171

Abstract

This study examines the contravention liability of legal persons in the field of road traffic from the perspective of the qualification and application issues generated by the current normative framework of the Republic of Moldova. Starting from the analysis of the general conditions established by Article 17 of the Contravention Code No. 218/2008, the research identifies the main categories of subjects susceptible to road traffic contravention liability: road transport operators, legal-person vehicle owners, and fleet managers, examining for each category the most frequent contentious situations and specific difficulties of legal qualification.

The study reveals a significant gap between the high frequency of legal persons' involvement in road traffic contravention relationships and the inadequacy of the normative framework governing the engagement, individualization, and enforcement of their liability – a gap that generates non-uniform case law with negative effects on the principles of equality before the law and predictability of the sanctioning system.

Keywords: contravention liability, legal person, road traffic, legal qualification.

RĂSPUNDEREA CONTRAVENȚIONALĂ A PERSOANELOR JURIDICE ÎN DOMENIUL CIRCULAȚIEI RUTIERE: PROBLEME DE CALIFICARE ȘI APLICARE

Abstract

Prezentul studiu examinează răspunderea contravențională a persoanelor juridice în domeniul circulației rutiere din perspectiva problemelor de calificare și aplicare generate de cadrul normativ actual al Republicii Moldova. Pornind de la analiza condițiilor generale instituite de art. 17 din Codul contravențional nr. 218/2008, cercetarea identifică principalele categorii de subiecți susceptibili de răspundere contravențională rutieră: operatori de transport rutier, proprietari de vehicule persoane juridice și administratori de parcuri auto, examinând pentru fiecare categorie situațiile litigioase frecvente și dificultățile specifice de calificare juridică.

Studiul relevă existența unui decalaj semnificativ între frecvența ridicată a implicării persoanelor juridice în raporturi contravenționale rutiere și insuficiența cadrului normativ care guvernează angajarea, individualizarea și executarea răspunderii acestora, decalaj care generează o jurisprudență neunitară cu efecte negative asupra principiilor egalității în fața legii și predictibilității sistemului sancționator.

Cuvinte-cheie: răspundere contravențională, persoană juridică, circulație rutieră, calificare juridică.

Introduction. The contravention liability of legal persons represents one of the most controversial and least systematized institutions of Moldovan contravention law, situated at the intersection of administrative law, commercial law, and contravention procedural law. Whereas in the field of criminal liability of legal persons, doctrine and case law have

accumulated, in recent years, a relatively consistent analytical corpus, their contravention liability has remained, in the domestic legal landscape, an insufficiently explored subject, despite the high frequency with which legal persons are involved in contravention proceedings and the legal complexity generated by their status as sanctionable subjects [11, pp. 145-162].

The field of road traffic amplifies this complexity in a specific manner. Unlike a natural person — the vehicle driver, who commits a road traffic offence directly and identifiably — the legal person intervenes in the road contravention relationship in a variety of distinct legal roles: as owner of the vehicle with which the contravention was committed, as a transport operator organizing and managing road transport activity, as employer of the vehicle driver, or as possessor of the vehicle under a legal title distinct from ownership [6, pp. 4-6]. Each of these roles generates a distinct legal configuration of contravention liability, with different conditions for engagement, forms of culpability, and applicable sanctions, the regulation of which in the Contravention Code of the Republic of Moldova is far from complete and coherent.

The issue of qualifying and applying the contravention liability of legal persons in the field of road traffic is therefore not merely academic. It produces direct and immediate practical consequences: enforcement officers applying sanctions in the absence of a clear normative basis; courts issuing divergent rulings in similar cases; legal persons sanctioned under conditions of legal uncertainty; and ultimately, an erosion of the legitimacy and predictability of the contravention system in the field of road traffic. Remedying these dysfunctions requires, as a first step, a systematic and critical analysis of the applicable normative framework, existing case law, and solutions adopted in comparable legal systems — an endeavour that the present study undertakes.

Methods and materials applied. Investigating the issues of qualification and application of the contravention liability of legal persons in the field of road traffic required the use of a set of legal research methods and techniques, selected in accordance with the mixed — normative, jurisprudential, and doctrinal — nature of the subject matter.

The dogmatic method formed the foundation of the research, materialised in the systematic analysis of the provisions of the Contravention Code of the Republic of Moldova No.218/2008, particularly Article 17, which regulates the general conditions of contravention liability of legal persons — read in conjunction with the special norms applicable in road traffic matters and with the provisions concerning the individualization and enforcement of contravention sanctions.

The interpretation of these texts was carried out through grammatical, systematic, and teleological techniques, with the aim of identifying normative gaps and interpretative tensions generated by their application to concrete legal situations.

The logical method was employed through the construction of deductive reasoning — from the general principles of contravention liability to the specific configurations of legal-person liability — and inductive reasoning, proceeding from concrete jurisprudential situations toward general conclusions regarding the coherence of the applicable normative framework.

The jurisprudential method complemented the normative analysis through an examination of judgments issued by courts of the Republic of Moldova in cases concerning the contravention liability of legal persons in the field of road traffic, with emphasis on the qualification and sanction-individualization problems most frequently encountered in practice.

The comparative method was applied by benchmarking Moldovan normative solu-

tions against regulations in Romania and France — states with relevant experience in the contravention liability of legal persons in the field of road transport.

The materials used include primary national and international normative sources, specialist doctrine from Moldovan and comparative contravention and administrative law, relevant national case law, as well as studies and institutional reports on the practice of applying contravention liability to road transport operators.

Discussions and results obtained. The recognition of the legal person as a distinct subject of contravention liability represents a relatively recent development in Moldovan law, enshrined through the adoption of the Contravention Code No.218/2008, which thereby transcended the traditional conception — inherited from the Soviet era — according to which contravention liability could be engaged exclusively against natural persons. This evolution reflected the acknowledgement that numerous contravention offences are committed not by individuals acting in their own name, but within and in the interest of collective entities — commercial companies, autonomous administrations, public institutions, associations — against which the exclusive sanctioning of the natural person involved proved insufficient both from the perspective of the proportionality principle and from that of the preventive function of contravention liability.

The general normative basis for the contravention liability of legal persons in Moldovan law is Article 17 of the Contravention Code, which establishes the cumulative conditions in the presence of which a legal person may be held liable for a contravention. According to this provision, a legal person — with the exception of public authorities — is liable for a contravention if one of the following alternative conditions is met: the act was committed in the interest of the legal person by a natural person vested with managerial functions, acting independently or as part of an organ of the legal person; the act was admitted or authorized by the organ or person responsible for the management or control of the legal person; or the act was committed as a result of the lack of supervision or control by the organ or person responsible for the management or control of the legal person [3].

An analysis of these conditions reveals that the Moldovan legislator has adopted, in the field of contravention liability of legal persons, a model of indirect or derivative liability, in which the engagement of the collective entity's liability is conditioned upon the existence of an act committed by an identifiable natural person — the person with managerial or supervisory functions, acting in the interest of or within the legal person. This model differs from the direct liability model adopted in some European legal systems, where the legal person is liable for its own act, independently of the identification and sanctioning of the natural person involved. The choice of the indirect model by the Moldovan legislator has significant practical consequences: in the absence of identification of the natural person who committed the act in the interest of the legal person, or in the absence of proof that the act was admitted or authorized by the governing body, the contravention liability of the legal person cannot be validly engaged — generating considerable practical difficulties in the field of road traffic, as will be discussed in the following sections.

A second essential characteristic of the general normative framework is the exclusion of public authorities from the category of subjects of contravention liability. Article 17 of the Contravention Code expressly provides that legal persons governed by public law — central and local public authorities, public institutions funded from the state budget — cannot be subjects of contravention liability. This exclusion, justified in doctrine by the functional immunity of public authorities and the inadequacy of contravention sanctions

in relation to public-law entities, nevertheless creates a significant normative gap in the context of road traffic: publicly-owned vehicles — belonging to state institutions, local authorities, or autonomous administrations — may be involved in road contraventions without the owner entity being subject to contravention liability as a legal person, leaving liability exclusively with the vehicle driver as a natural person [4, pp. 25-28].

Contravention sanctions applicable to legal persons are regulated by Articles 32 et seq. of the Contravention Code and include: the fine and the deprivation of the right to carry out a certain activity, the latter of which may be applied as a supplementary sanction [3]. The contravention fine applicable to legal persons is established in conventional units, with significantly higher upper limits than those applicable to natural persons, reflecting the greater economic capacity of collective entities and the need for the sanction to have a genuinely dissuasive effect on them [10, pp. 89-102]. The deprivation of the right to carry out a certain activity represents, in the context of road traffic, the most severe sanction applicable to legal persons — transport operators or commercial companies engaged in transport activities — as it may lead to the suspension or withdrawal of the transport authorization, with major economic consequences for the sanctioned entity.

A distinct and insufficiently regulated aspect of the general normative framework concerns the relationship between the contravention liability of the legal person and that of the natural person involved in committing the same act. The Contravention Code does not contain an express and general provision regulating the possibility of cumulating the two forms of liability — that of the legal person and that of the natural person holding managerial or supervisory functions — leaving this matter to the specific normative framework of each category of contraventions and, ultimately, to the interpretative discretion of the courts. This gap generates non-uniform judicial practice regarding the possibility of simultaneously sanctioning the legal person and the natural person for the same contravention, with direct consequences for the predictability and fairness of the sanctioning system.

The legal qualification of a road contravention committed in the context of a legal person's activity represents, in Moldovan administrative and judicial practice, one of the most frequent sources of procedural error and jurisprudential divergence. The difficulty of qualification does not reside, in the majority of cases, in identifying the contravention rule infringed — which is generally clear and foreseeable — but in determining the subject of contravention liability: the natural person (the vehicle driver), the legal person (owner, possessor, or transport operator), or both, under a cumulative regime. This difficulty is amplified by the specific nature of road traffic contraventions, which are committed, by their very nature, by a natural person (the vehicle driver), but which may be generated, facilitated, or even imposed by organizational decisions of the legal person in whose interest or within whose framework the driver acts.

The first alternative condition provided by Article 17 of the Contravention Code for engaging the contravention liability of a legal person — the commission of the act in the interest of the legal person by a natural person vested with managerial functions — raises, in the context of road traffic, an interpretive issue with direct practical consequences: what is meant by committing a road traffic contravention "in the interest of the legal person"?

In a strict and restrictive interpretation, this condition could be understood as requiring the existence of a direct and identifiable benefit to the legal person resulting from the commission of the road contravention. Thus, exceeding the legal speed limit by the driver of a vehicle belonging to a transport company could be qualified as committed in

the interest of the legal person if such excess was imposed or stimulated by the company's internal policy — for instance, by setting delivery deadlines impossible to meet under normal traffic conditions — but not if it represents an exclusively personal initiative of the driver, independent of any decision or organizational policy of the employer.

In a broader interpretation more favourable to procedural efficiency, the commission of the act in the interest of the legal person could be presumed whenever the vehicle driver acts in the exercise of his or her professional duties, regardless of whether the contravention was or was not imposed or stimulated by the employer's internal policy. This interpretation, closer to the model of vicarious liability in civil law, has the advantage of simplifying the burden of proof, but raises issues from the perspective of the culpability principle governing contravention liability, which requires that a sanction be applied exclusively to the person against whom a form of culpability — intent or negligence — can be established in relation to the act committed [11, pp. 178-185].

The Contravention Code does not explicitly resolve this interpretive dilemma, leaving courts with the task of determining, on a case-by-case basis, whether the vehicle driver's act was committed in the interest of the legal person within the meaning of Article 17. The absence of clear normative criteria in this regard generates non-uniform case law, in which different courts reach divergent conclusions in cases with similar factual circumstances, thereby undermining the principle of equality before the law and the predictability of the sanctioning system.

The second alternative condition provided by Article 17 — the admission or authorization of the act by the organ or person responsible for the management or control of the legal person — is, in the context of road traffic, even more difficult to prove in practice. This condition presupposes the existence of a volitional act by the governing body of the legal person — a decision, instruction, or directive — by which the contravention was expressly or implicitly authorized or admitted. Applied to road contraventions, this condition could be satisfied, for example, where the transport company issued internal instructions requiring drivers to adhere to transport schedules incompatible with compliance with traffic rules, or where the governing body tacitly accepted the employees' contravention practices without taking corrective measures.

The evidentiary difficulty is evident: the enforcement officer drawing up the contravention report does not ordinarily have access to the internal documents of the legal person — transport schedules, internal instructions, minutes of governing body meetings — that could prove the admission or authorization of the act. This evidentiary limitation renders the second alternative condition of Article 17 practically inapplicable at the detection stage in road traffic matters; the liability of the legal person can be engaged on this basis only during judicial proceedings, where the court may order additional evidence to be produced.

The third alternative condition — the commission of the act as a result of the lack of supervision or control by the organ or person responsible for the management or control of the legal person — is theoretically the most accessible from the perspective of engaging contravention liability of legal persons in road traffic matters, as it implies a form of organizational negligence, independent of the existence of an explicit volitional act of the governing body. Under this hypothesis, the legal person is liable not because it ordered or authorized the act, but because it failed to establish the supervision and control mechanisms necessary to prevent its commission by its employees or agents.

Applied in the field of road traffic, this condition could ground the contravention liability of transport operators who have not established adequate systems for monitor-

ing the behaviour of employed drivers — tachographs, GPS systems, periodic compliance checks — of legal-person vehicle owners who have not internally regulated the conditions of use of vehicles in their own fleet, or of transport companies that have not verified that their employees hold valid driving licences corresponding to the category of vehicles driven.

Even this condition, however, is not free from qualification difficulties. The standard of diligence required of a legal person in supervising and controlling the activity of vehicle drivers is not normatively defined, leaving courts with broad discretion in determining whether the lack of supervision attributed to the legal person reaches the threshold required for engaging contravention liability. This discretionary margin, in the absence of clear normative criteria, contributes to the non-uniformity of judicial practice and to the unpredictability of outcomes in similar cases [10, pp. 198-204].

A distinct qualification issue of particular doctrinal significance concerns the form of culpability with which a legal person commits a road contravention. The Contravention Code regulates the forms of culpability — intent and negligence — exclusively by reference to natural persons, without containing explicit provisions regarding how these forms translate to collective entities. Legal doctrine has proposed, in this regard, two distinct approaches: the identification theory, according to which the culpability of the legal person is identified with the culpability of its governing bodies, and the organizational negligence theory, according to which the culpability of the legal person is its own, distinct from the culpability of the natural persons involved, consisting in structural deficiencies of its internal organization, supervision, and control system [5, pp. 198-210]. In the context of road traffic, the organizational negligence theory appears better suited to practical reality, as it allows the engagement of a legal person's contravention liability independently of establishing the individual culpability of a specific natural person, based on the finding that the organizational deficiencies of the collective entity created conditions favourable to the commission of the contravention.

The diversity of legal roles in which a legal person may intervene in road contravention relationships necessitates a differentiated analysis of the main categories of subjects susceptible to contravention liability in this field. Moldovan judicial practice and comparative experience reveal that the most frequent and complex contentious situations from the perspective of legal qualification are concentrated around three main categories of legal persons: road transport operators, legal-person vehicle owners that do not engage in professional transport activity, and fleet managers. Each of these categories presents specific particularities regarding the conditions for engaging contravention liability, applicable sanctions, and practical difficulties in proving the constituent elements of liability.

Road transport operators — commercial companies authorized to carry out public or private road transport of passengers or goods — represent the category of legal persons most frequently involved in contravention proceedings in the field of road traffic and, at the same time, the category in respect of which the applicable normative framework is most developed, though still far from complete and coherent.

The specific nature of transport operators' activities generates a distinctive type of contravention risk: road contraventions committed systematically in the context of carrying out transport activity, by a large number of employed drivers under the coordination and supervision of the legal person. This systemic nature of contravention risk means that the operator's liability cannot be reduced to the sum of the individual liabilities of employed drivers, but requires a separate assessment of the organizational negligence of the collective entity — the manner in which it organized its operations, the supervision

and control systems it established, and the preventive measures it adopted to reduce contravention risk [2, pp. 17-19].

The most frequent contentious situations in judicial practice regarding transport operators concern, first, contraventions related to drivers' working time and rest periods. Non-compliance with driving time and rest requirements prescribed by applicable national and European regulations — in particular Regulation (EC) No.561/2006 for international transport — generates contraventions attributable both to the vehicle driver and to the transport operator who imposed or tolerated non-compliance with these rules. The legal qualification of such acts raises the distinct issue of delineating the natural person's liability (the driver who exceeded the permitted driving time) from the legal person's liability (the operator who organized transport activity under conditions incompatible with compliance with working time rules). The Contravention Code does not contain explicit provisions regulating this delineation, leaving courts to make it on a case-by-case basis in light of the evidence produced [2, pp. 15-17].

A second frequent category of contentious situations concerns contraventions related to the technical condition of vehicles. Operating vehicles with technical defects in the braking system, steering mechanism, or lighting and signalling devices — acts sanctioned under Article 228 of the Contravention Code — may be attributed both to the vehicle driver, who agreed to drive a vehicle with visible technical defects, and to the transport operator, who failed to ensure that periodic technical inspections were carried out and that the vehicle was maintained in proper working condition. Engaging the transport operator's liability for this category of contraventions requires proof that the technical defects identified pre-existed the vehicle's departure and that the operator failed to remedy them, with or without the driver's knowledge — proof that is, in practice, difficult to obtain and largely dependent on the vehicle's technical documentation (maintenance records, technical inspection reports) to which enforcement officers have no direct access at the time of detecting the contravention.

A third frequent and legally complex contentious situation concerns the overloading of freight vehicles. Exceeding the maximum authorized total weight or the maximum axle load — contraventions provided for in specific road transport regulations — involves, by its very nature, an organizational decision of the transport operator or cargo sender, not merely an individual act of the vehicle driver. Nevertheless, in Moldovan contravention practice, sanctions are applied predominantly to the vehicle driver as an identifiable natural person at the time of detection, without the transport operator's liability being systematically investigated and engaged. This non-uniform administrative practice reflects both the instrumental limitations of enforcement officers in investigating legal-person liability at the scene of detection and the absence of clear procedures for referring the matter to competent authorities to engage the operator's liability in cases where the contravention evidently involves an organizational decision on the part of the operator.

A distinct and, from the perspective of legal qualification, less regulated category consists of legal persons that own vehicles in their assets without engaging in professional transport activity — commercial companies with production or trade profiles using vehicles for supply, delivery, or personnel transport activities; educational institutions; non-governmental organizations; and others. For these legal persons, vehicles are driven by employees who are not professional drivers and over whom the legal-person owner exercises less formalized control than in the case of professional road transport.

The most frequent contentious situation in this category concerns contraventions committed by employees during business trips. The vehicle driver — the legal person's

employee — commits a road contravention while on a trip undertaken in the exercise of professional duties, using a vehicle belonging to the employer. The legal qualification of this situation raises the question of whether the act was committed in the interest of the legal person within the meaning of Article 17 of the Contravention Code and, consequently, whether the legal person's contravention liability may be engaged in parallel with the driver's liability.

The answer to this question is not uniform in Moldovan judicial practice. Some courts have held that the mere fact that the journey was undertaken for business purposes is sufficient to conclude that the act was committed in the interest of the legal person, thereby engaging the latter's liability. Other courts have adopted a more restrictive position, requiring proof that the legal person directly benefited from the contravention or that it contributed to creating conditions favourable to its commission. This jurisprudential divergence, generated by the absence of clear normative criteria, directly affects the predictability of the contravention system and the equal treatment of legal persons in similar legal situations.

A distinct and increasingly frequent contentious situation in recent practice concerns the use of legal-person vehicles for personal purposes by employees or managers outside working hours and without the employer's explicit consent. In such cases, the legal qualification of the legal person's liability is even more challenging: the vehicle belongs to the legal person but is used outside its activity, without the knowledge or approval of its governing bodies. Engaging the legal person's contravention liability in this scenario would presuppose proof that the lack of supervision and control allowed the unauthorized use of the vehicle — a considerable evidentiary burden that, in practice, generally results in the exclusive sanctioning of the vehicle driver as a natural person.

A third category of subjects, less discussed in Moldovan doctrine but relevant from the perspective of contravention practice, consists of legal persons managing vehicle fleets within complex organizational structures: corporate groups, holdings, and public institutions with their own vehicle fleets. In these structures, vehicles may be owned by one legal entity (the parent company or a subsidiary specialized in fleet management) but used in the operations of other distinct legal entities (operational subsidiaries, branches, or contractual partners). This separation between vehicle ownership and operational use generates significant legal uncertainties as to the subject of contravention liability: is it the legal person owning the vehicle, the legal person using it, or both? The Contravention Code does not contain explicit provisions regulating this situation, and the mechanism established by Article 16^1 — owner liability for failure to communicate the identity of the driver — does not satisfactorily resolve the issue, as it targets only the identification of the vehicle driver as a natural person, not the delineation of liability among multiple legal persons involved in the use of the same vehicle. This normative gap means that, in practice, contravention liability in these complex organizational structures is engaged arbitrarily, depending on the specific circumstances of detection and the investigative diligence of the enforcement officer, rather than accurately reflecting the actual distribution of organizational responsibility among the entities involved.

The analysis of the normative framework and of frequent contentious situations reveals that the qualification difficulties identified in the preceding sections are directly reflected in the practice of applying contravention liability to legal persons in the field of road traffic, generating procedural dysfunctions with concrete consequences for the effectiveness of the sanctioning system and for the rights of sanctioned legal persons.

The first practical difficulty concerns the individualization of the sanction against

the legal person. The Contravention Code establishes, through Article 41, the general criteria for individualizing the contravention sanction: the gravity of the act, the circumstances of its commission, the personality of the offender, and the offender's financial situation [3]. However, these criteria were conceived primarily by reference to natural persons and translate with difficulty to collective entities. The concept of the "personality of the offender" has no direct counterpart in the case of a legal person, and the "financial situation" of the legal person — which should determine the amount of the fine to ensure a genuinely dissuasive effect — is not systematically verified by enforcement officers at the time of imposing the sanction. The practical consequence is that contravention fines applied to legal persons are generally set at fixed levels or close to the minimum prescribed by the relevant rule, without genuine individualization based on the economic capacity of the sanctioned entity, significantly diminishing their preventive effect in respect of legally persons with high financial capacity.

The second practical difficulty concerns the cumulation of the legal person's liability with the natural person's liability for the same contravention. Although Article 17 of the Contravention Code does not explicitly exclude the possibility of simultaneously sanctioning the legal person and the natural person involved, the absence of express regulation of this cumulation generates divergent practices: some enforcement officers sanction only the vehicle driver as a natural person; others sanction only the legal person; and others apply sanctions to both categories of subjects. This non-uniformity undermines the principle of equality before the law and causes the level of protection of the social values safeguarded by road contravention rules to vary depending on the individual practice of the enforcement officer rather than on the provisions of law [1, pp. 112-118].

The third practical difficulty concerns the enforcement of contravention sanctions imposed on legal persons. A contravention fine applied to a legal person is, from the enforcement perspective, significantly more complex than one applied to a natural person, requiring the identification of the legal person's assets subject to enforcement, compliance with the specific enforcement procedure applicable to commercial entities, and the handling of situations in which the legal person is in insolvency or liquidation proceedings at the time of enforcement. The Contravention Code does not contain special provisions regarding the enforcement of sanctions against financially distressed legal persons, leaving such situations to be governed by reference to the general rules of enforcement law, whose application in the contravention context is not always clear and predictable.

From a comparative law perspective, the Romanian and French experience offers relevant solutions for remedying these practical difficulties. In Romania, Government Ordinance No.2/2001 on the legal regime of contraventions — although predating the Moldovan Contravention Code — contains more detailed provisions regarding the individualization of sanctions against legal persons, requiring that the entity's turnover be taken into account [6, pp. 7-9] when setting the fine amount, thereby ensuring a genuinely dissuasive effect regardless of the economic size of the legal person. In France, the Transport Code contains express provisions on the joint liability of the transport operator for fines imposed on employed drivers for contraventions committed in the course of transport activity — a solution that eliminates qualification uncertainties regarding the subject of liability and significantly simplifies the procedure for engaging the legal person's liability in road traffic matters.

In light of these comparative experiences and the dysfunctions identified in the analysis of the Moldovan normative framework, the following ***de lege ferenda proposals*** are warranted:

1. First, the amendment of Article 17 of the Contravention Code with clear normative criteria specifying the conditions under which the act of the vehicle driver is presumed to have been committed in the interest of the employing legal person, thereby eliminating the main source of jurisprudential divergence in this field.

2. Second, the introduction of an express provision regulating the cumulation of the legal person's contravention liability with the vehicle driver's liability as a natural person, establishing the conditions and limits of this cumulation and eliminating the current non-uniform practice.

3. Third, the supplementation of the individualization criteria set forth in Article 41 of the Contravention Code with explicit references to the economic capacity of the sanctioned legal person, measured by objective indicators such as turnover or share capital, in order to ensure a genuinely dissuasive effect of the contravention fine regardless of the economic size of the sanctioned entity.

4. Fourth, the express regulation of the enforcement procedure for contravention sanctions against legal persons in insolvency or liquidation proceedings, eliminating the current normative voids that allow, in practice, evasion of the enforcement of sanctions through the legal restructuring of the sanctioned entity.

Conclusions. The research undertaken in this study has demonstrated that the contravention liability of legal persons in the field of road traffic represents, in current Moldovan law, a legal institution characterized by a significant gap between the high frequency of legal persons' involvement in road contravention relationships and the low level of normative maturity of the legal framework governing the engagement, qualification, and application of this form of liability.

The analysis of the general normative framework established by Article 17 of the Contravention Code has revealed that the alternative conditions of legal-person liability are formulated at a level of generality that renders them difficult to apply to the specific concrete situations of road traffic, in the absence of additional normative criteria to guide their uniform interpretation by enforcement officers and courts. This normative inadequacy is directly reflected in the diversity and complexity of contentious situations identified in judicial practice, generating divergent outcomes in cases with similar factual circumstances and thereby undermining the principles of equality before the law and predictability of the sanctioning system.

The practical difficulties of application — the inadequate individualization of the sanction relative to the legal person's actual economic capacity, the absence of clear regulations on the cumulation of legal-person liability with that of the natural person, and the insufficiency of the normative framework on the enforcement of sanctions — cannot be remedied through judicial interpretation or non-uniform administrative practice, but require express legislative interventions at the level of the Contravention Code. The comparative experience of Romania and France demonstrates that a clear and coherent normative framework in this field not only simplifies the procedure for engaging legal-person liability but effectively contributes to reducing the frequency of road contraventions committed in the context of collective entities' activities.

The *de lege ferenda proposals formulated in this study* — the amendment of Article 17 with clear normative criteria, the express regulation of the cumulation of liability, the adaptation of individualization criteria to the specific nature of collective entities, and the completion of the framework on the enforcement of sanctions against financially distressed legal persons — constitute necessary and urgent interventions, the implementation of which would significantly consolidate the effectiveness, predictability, and legiti-

macy of the Moldovan contravention system in the field of road traffic.

Bibliographical references

1. Aramă Elena. Teoria generală a dreptului [General Theory of Law]. Chișinău: Reclama, 2004. 256 p.
2. Bîrgău Mihail. Particularitățile răspunderii contravenționale a persoanelor juridice în domeniul transportului rutier [Particularities of the Contravention Liability of Legal Persons in the Field of Road Transport]. In: Legea și viața. 2020, No. 9, pp. 15–22. ISSN 1810-309X.
3. Contravention Code of the Republic of Moldova No.218/2008, republished in the Official Gazette of the Republic of Moldova No.78-84 of 17 March 2017, as subsequently amended.
4. Cojocaru Vladislav. Răspunderea contravențională a persoanelor juridice: aspecte teoretice și practice [Contravention Liability of Legal Persons: Theoretical and Practical Aspects]. In: Legea și viața. 2019, No.6, pp. 23-31. ISSN 1810-309X.
5. Costachi Gheorghe, Hlipcă Petru. Organizarea și funcționarea puterii în statul de drept [The Organization and Functioning of Power in the Rule-of-Law State]. Chișinău: Institute of History, State and Law of the Academy of Sciences of Moldova, 2010. 304 p.
6. Creangă Ion. Răspunderea contravențională: formă a răspunderii juridice [Contravention Liability: A Form of Legal Liability]. In: Legea și viața. 2017, No.3, pp. 4-9. ISSN 1810-309X.
7. European Court of Human Rights, Anghel v. Romania, Application No.28183/03, Judgment of 4 October 2007.
8. European Court of Human Rights, Falk v. the Netherlands, Application No.66273/01, Decision on Inadmissibility of 19 October 2004.
9. European Court of Human Rights, Salabiaku v. France, Application No.10519/83, Judgment of 7 October 1988, Series A No.141-A.
10. Guțuleac Victor. Drept contravențional [Contravention Law]. Chișinău: ULIM, 2006. 270 p.
11. Guțuleac Victor. Tratat de drept contravențional [Treatise on Contravention Law]. Chișinău: S.n., 2009. 320 p. ISBN 978-9975-75-470-0.
12. Decision of the Government of the Republic of Moldova No.357/2009 approving the Road Traffic Regulations. In: Official Gazette of the Republic of Moldova No.92-93 of 6 May 2009, as subsequently amended.
13. Government Ordinance of Romania No.2/2001 on the Legal Regime of Contraventions, published in the Official Gazette of Romania No.410 of 25 July 2001, as subsequently amended.
14. Regulation (EC) No.561/2006 of the European Parliament and of the Council of 15 March 2006 on the Harmonisation of Certain Social Legislation Relating to Road Transport. In: Official Journal of the European Union L 102 of 11 April 2006.

CZU [343.54(498+478)+341.231.14]:004.056 DOI: https://doi.org/10.5281/zenodo.20846619

ELECTRONIC MONITORING IN COMBATING DOMESTIC VIOLENCE: COMPARATIVE ANALYSIS ROMANIA AND THE REPUBLIC OF MOLDOVA THROUGH THE LENS OF ECTHR CASE LAW

Iulian MAXIM,
Academic Year Coordinator,
"Alexandru Ioan Cuza" Police Academy, Bucharest,
Romania
ORCID: 0009-0003-4237-8300

Abstract

This article examines the impact and effectiveness of electronic monitoring systems for offenders, especially GPS ankle bracelets, as modern tools for the protection of victims of domestic violence. The study starts from the premise that traditional mechanisms of protection, such as paper-based protection orders, have often proved insufficient in situations involving high-risk offenders. The analysis highlights the evolution of the legal framework in Romania and the Republic of Moldova, the role of the European Court of Human Rights in strengthening the positive obligations of states, and the relevance of contemporary criminal-law doctrine in grounding a proportional and effective intervention.

The paper also integrates an economic perspective on the cost-benefit ratio of electronic monitoring and argues that the use of technology in criminal justice can generate real preventive effects by reducing recidivism and increasing the capacity of authorities to intervene rapidly. The central conclusion is that electronic monitoring should no longer be regarded as a mere technical instrument, but as an essential component of the effective protection of victims of domestic violence in a modern state governed by the rule of law.

Keywords: electronic monitoring, domestic violence, GPS ankle bracelet, ECHR, protection order, criminal prevention.

MONITORIZAREA ELECTRONICĂ ÎN COMBATEREA VIOLENȚEI DOMESTICE: ANALIZA COMPARATIVĂ ROMÂNIA ȘI REPUBLICA MOLDOVA PRIN PRISMA JURISTPRUDENȚEI CEDO

Abstract

Prezentul articol analizează impactul și eficiența sistemelor de monitorizare electronică a agresorilor, în special a brățărilor GPS, ca instrumente moderne de protecție a victimelor violenței domestice. Studiul pornește de la premisa că formele clasice de protecție, precum ordinul de protecție pe suport de hârtie, s-au dovedit adesea insuficiente în fața unor agresori cu grad ridicat de periculozitate. Analiza evidențiază evoluția cadrului legislativ din România și Republica Moldova, rolul jurisprudenței Curții Europene a Drepturilor Omului în consolidarea obligațiilor pozitive ale statelor și relevanța doctrinei penale contemporane pentru fundamentarea unei intervenții proporționale și eficiente.

Lucrarea integrează, de asemenea, o perspectivă economică privind raportul cost-beneficiu al monitorizării electronice și arată că utilizarea tehnologiei în domeniul justiției penale poate produce efecte preventive reale, reducând riscul recidivei și sporind capacitatea autorităților de a interveni rapid. Concluzia centrală este că monitorizarea electronică nu mai poate fi privită ca un simplu instrument tehnic, ci ca o componentă esențială a protecției efective a victimelor violenței domestice într-un stat de drept modern.

Cuvinte-cheie: monitorizare electronica, violență domestică, brățară GPS, CEDO, ordin de protective, prevenție penală.

Introduction. Domestic violence is one of the most complex and insidious forms of criminality because it occurs in a space that should normally be associated with safety, protection, and relational stability: the home. Precisely because the conduct takes place within the sphere of private life, the state was, for a long period, reluctant to intervene decisively, often under an overly broad understanding of family autonomy. The development of international human-rights law has shown, however, that the private character of family relations cannot justify institutional passivity in the face of repeated physical, psychological, or economic abuse.

Over the past two decades, the case law of the European Court of Human Rights has imposed a clear positive obligation on states: they may not confine themselves to the formal recognition of rights and protective measures, but must establish effective mechanisms capable of preventing aggression and protecting vulnerable persons [1]. Within this new conceptual framework, the electronic monitoring of offenders appears as an expression of the transformation of criminal justice from a predominantly reactive system into one oriented toward prevention and early intervention.

The methodology of this research is based on doctrinal, jurisprudential, and comparative analysis of the normative framework in Romania and the Republic of Moldova, correlated with observations on the economic sustainability of electronic monitoring. The working hypothesis is that the actual effectiveness of protection orders and preventive measures depends directly on the existence of technical instruments capable of verifying compliance in real time.

Discussions and results obtained. I. ECHR Standards: From Passivity to Enhanced Diligence. The European Court of Human Rights has played a decisive role in redefining the responsibility of states in cases of domestic violence. From the Convention perspective, protection against inhuman or degrading treatment and the safeguarding of private and family life involve not only negative obligations but also positive obligations, meaning that the state must adopt effective operational measures whenever the authorities know, or ought to know, that there is a real and immediate risk to the victim.

In *Bălșan v. Romania* [2], the Court found that the national authorities had minimized the seriousness of domestic violence and treated the acts as mere family conflicts. Such an approach was found incompatible with the requirements of the Convention because it emptied state protection of its practical content. Beyond the particular facts, the judgment sends a principled message: the lack of a prompt, coherent, and firm response by the authorities may amount to a form of institutional tolerance of violence.

In *T.M. and C.M. v. the Republic of Moldova* [3], the Court emphasized that the mere issuance of a protection order is not enough if the state lacks real mechanisms to secure its enforcement. In that case, the orders were repeatedly breached, while the authorities' response proved ineffective. The judgment is highly relevant for the present topic because it shows clearly that formal protection, unaccompanied by effective means of control, may remain purely theoretical.

Accordingly, the European standard is not limited to the existence of an adequate legal framework. It requires enhanced diligence in the execution of protective measures. It is precisely within this sphere of practical effectiveness that electronic monitoring operates, turning the abstract duty of protection into a concrete mechanism of verification, alert, and intervention.

II. Doctrinal Foundations and the Criminal-Law Justification of the Measure. In contemporary criminal-law doctrine, the legitimacy of preventive measures is assessed by reference to three fundamental requirements: legality, necessity, and proportionali-

ty. Professor Alexandru Boroi [4] emphasizes that restrictive procedural measures must serve a legitimate purpose, be adequate to the concrete risk, and not exceed what is necessary to prevent new antisocial acts. Applied to domestic violence, this perspective allows electronic monitoring to be understood as an instrument of judicial individualization and special prevention.

Electronic monitoring does not, in itself, amount to a custodial sanction, yet it produces a heightened legal control over the offender's conduct. For this reason, its justification must derive from the existence of a real risk of repeated violence, a history of breaching protection orders, or the seriousness of the threats made. In such situations, the use of an electronic device appears less intrusive than detention, but significantly more effective than a purely formal warning.

From a psychological and criminological standpoint, real-time supervision also has a deterrent effect. Awareness that any approach toward the victim can be detected instantly reduces impulsivity and limits the offender's sense of impunity. In this way, electronic monitoring becomes a tool located at the intersection of technology, prevention, and the effective protection of fundamental rights.

III. Comparative Analysis: Romania and the Republic Of Moldova. In Romania, Law No.146/2021 on Electronic Monitoring established the Electronic Monitoring Information System (SIME – Sistemul Informațional de Monitorizare Electronică) [6], conceived as a technical and institutional framework that allows authorities to supervise compliance with certain measures imposed by judicial bodies. In the field of protection against domestic violence, the essential merit of the system lies in its functional link with operative intervention mechanisms, including the national emergency service 112, which gives practical value to alerts generated by the devices.

The Romanian model has the advantage of an architecture centered on rapid response and institutional coordination. When the offender enters the prohibited perimeter or breaches other obligations set by the court, the system may generate an alert that enables the immediate dispatch of a police unit. From this perspective, the ankle bracelet is not merely a surveillance device, but also an evidentiary instrument, because location data and time intervals can confirm the breach of the imposed measure.

In the Republic of Moldova, electronic monitoring is more closely integrated into probation and judicial supervision. The emphasis lies not only on rapid intervention, but also on the continuous control of compliance with the obligations imposed on the monitored person. This model highlights the role of probation services in risk management and in building a form of supervision oriented toward preventing recidivism.

Comparatively, both systems pursue the same criminal-policy objective: transforming the protection order from a legal act with uncertain effectiveness into a genuinely enforceable instrument. The institutional differences do not alter this common purpose, but rather illustrate two complementary ways of responding to the same demand imposed by European case law: the effective, and not merely declaratory, protection of the victim.

IV. Economic Costs and Social Benefits. The debate on electronic monitoring cannot be confined to strictly legal considerations, because the sustainability of a public policy also depends on its cost-benefit ratio. In general, the daily cost of an electronic monitoring kit is lower than the daily cost of detention. Even though initial implementation requires logistical, technological, and institutional investment, maintaining the system is, in the medium and long term, less burdensome than maintaining an exclusively punitive policy.

More importantly, domestic violence generates considerable indirect costs: emer-

gency medical interventions, social-assistance services, police and prosecutorial work, repeated judicial proceedings, loss of productivity, and long-term effects on the physical and mental health of victims and child witnesses. From this perspective, electronic monitoring should not be assessed solely in terms of the cost of the device itself, but also in terms of the costs it helps avoid.

By preventing the offender from approaching the victim and by enabling rapid intervention before a new assault occurs, the state reduces not only human risk but also financial pressure on the health, judicial, and social systems. Thus, the use of technology appears both legally justified and economically rational, with social effects that go beyond the narrow sphere of criminal procedure.

V. Case Study: Preventing Assault in Real Time. A hypothetical example, built on the logic of recent judicial practice, clearly illustrates the usefulness of the system. Let us assume a preventive measure under which the defendant is prohibited from approaching the victim's home within a radius of 500 meters. Under a traditional system, the effectiveness of such an obligation depends almost entirely on the later reporting of the breach and the speed of the police response.

With electronic monitoring in place, however, the violation of the perimeter immediately triggers an alert to the dispatch center. The victim may be informed in time to secure herself, while the intervention team can be directed on the basis of GPS data provided by the system. The essential result lies in shifting the moment of state reaction: intervention occurs before the assault is committed, not after it has already happened.

The importance of this mechanism also lies in its evidentiary value. The technical data produced by the system make it possible to document the breach objectively and reduce the evidentiary difficulties specific to domestic-violence cases, where the parties' statements are often contradictory. For this reason, electronic monitoring functions simultaneously as a means of prevention and as an instrument that strengthens procedural effectiveness.

Conclusions. Domestic violence remains one of the most persistent and complex challenges faced by contemporary legal systems, because it unfolds within a sphere traditionally perceived as private, yet one that may in reality become a space of vulnerability and abuse. The evolution of European criminal law demonstrates that the effective protection of victims can no longer be achieved solely through traditional legal mechanisms; it requires the integration of technological instruments capable of ensuring rapid intervention and the prevention of violent acts.

In this context, the electronic monitoring of offenders emerges as an essential instrument of modern criminal policy, situated at the intersection of the protection of fundamental rights and the necessity of crime prevention. The analysis of the legal frameworks in Romania and the Republic of Moldova reveals a clear trend toward strengthening technological supervision mechanisms in response to the standards imposed by the European Court of Human Rights concerning the positive obligations of states in the prevention of domestic violence.

By means of electronic monitoring systems, preventive measures acquire real effectiveness and move beyond the formal limits of traditional protection orders. Real-time supervision allows the immediate detection of breaches and facilitates the prompt intervention of the authorities, significantly reducing the risk of further violence. At the same time, this form of legal control strikes a balance between the monitored person's freedom of movement and the victim's fundamental right to life, security, and physical integrity.

From an economic and social perspective, electronic monitoring proves to be not

only an efficient solution, but also a sustainable one. Lower costs in comparison with detention and the positive impact on the prevention of recidivism show that the use of technology in criminal justice can contribute to the optimization of state resources and to a higher overall level of social safety.

In conclusion, the integration of technology into criminal-prevention mechanisms marks a fundamental stage in the modernization of the justice system. Electronic monitoring should not be viewed as a mere technological innovation, but as the expression of a new understanding of the role of the state in protecting vulnerable persons. In a society where human dignity and physical integrity are core values of the rule of law, the use of electronic monitoring can no longer be regarded as a simple technological option, but as a necessary expression of the state's responsibility to prevent violence and to guarantee the real security of vulnerable persons.

Bibliographical references

1. Council of Europe. (1950). European Convention on Human Rights. Rome, Italy, 4 November 1950. Available: https://www.echr.coe.in.
2. ECHR, Bălșan v. Romania, Application No.49645/09, Judgment of 23 May 2017.
3. ECHR, T.M. and C.M. v. the Republic of Moldova, Application No.26608/11, Judgment of 28 January 2014.
4. Boroi Alexandru. Drept penal. Partea specială. Bucharest: C.H. Beck Publishing House, 2022.
5. Boroi Alexandru, Rusu Ion. Infracțiuni prevăzute în legi special. Bucharest: C.H. Beck Publishing House, 2019.
6. Law No.146/2021 on Electronic Monitoring (Romania).
7. Antoniu George. Tratat de drept penal. Bucharest: Universul Juridic Publishing House, 2016.
8. Council of Europe, Guide on Article 3 of the European Convention on Human Rights, 2022.
9. ECHR, Eremia v. the Republic of Moldova, Application No.3564/11, Judgment of 28 May 2013.
10. ECHR, Opuz v. Turkey, Application No.33401/02, Judgment of 9 June 2009.
11. European Institute for Gender Equality, The Economic Cost of Gender-Based Violence in the EU, 2021.
12. Hotca Mihai Adrian. Drept penal. Partea specială. Bucharest: Universul Juridic Publishing House, 2020.
13. Law No.45/2007 on Preventing and Combating Family Violence (Republic of Moldova).
14. Mitrache Constantin, Mitrache Cristian. Drept penal roman. Bucharest: Universul Juridic Publishing House, 2019.
15. Pascu Ilie. Drept penal. Partea generală. Bucharest: Hamangiu Publishing House, 2018.
16. Government of Romania. Criminal Code (Law No.286/2009). In: Official Gazette of Romania, No.510/2009, as amended.
17. Streteanu Florin, Nițu Daniel. Drept penal. Partea generală. Bucharest: Universul Juridic Publishing House, 2018.
18. Toader Tudorel. Drept penal român. Bucharest: Hamangiu Publishing House, 2019.
19. Udroiu Mihail. Drept penal. Partea generală. Bucharest: C.H. Beck Publishing House, 2021.
20. Dobrinoiu Vasile (coord.). Noul Cod penal comentat. Bucharest: Universul Juridic Publishing House, 2020.

21. National Administration of Penitentiaries, Annual Report, Bucharest, 2023.
22. National Agency for Equal Opportunities for Women and Men. Reports and Materials on Domestic Violence, Bucharest, 2023.
23. Council of Europe, Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence.
24. Supreme Court of Justice of the Republic of Moldova, relevant case-law guidance in matters of family violence.
25. European Commission, Protecting victims' rights in the EU, Brussels, 2022.
26. FRA - European Union Agency for Fundamental Rights, Violence against women: an EU-wide survey, Luxembourg, 2014.
27. Romanian General Inspectorate of Police. Statistical Data on Protection Orders and Interventions in Domestic-Violence Cases.
28. National Probation Inspectorate of the Republic of Moldova. Activity Reports on Electronic Supervision.
29. United Nations. Handbook for Legislation on Violence against Women. New York, 2010.
30. UN Women. Essential services package for women and girls subject to violence. New York, 2015.

CZU 341.231.14:343.352 **DOI: https://doi.org/10.5281/zenodo.20846774**

THE RIGHT TO PRIVACY IN CONFORMITY WITH THE APPLICATION OF THE RIGHT TO INTEGRITY FROM THE POINT OF VIEW OF PREVENTING AND FIGHTING CORRUPTION

Daniel CRISTEA,
PhD, Chief Police Commissioner,
Criminal Investigation Office, Buzau County Police Inspectorate,
Romania
ORCID: 0000-0002-5786-2619

Abstract

The right to privacy and the right to integrity are two essential components of the protection of the person in a state governed by the rule of law, and their interaction becomes particularly relevant in the context of preventing and combating corruption. On the one hand, anti-corruption measures often involve interference in the sphere of private life – such as technical surveillance, asset verification, and access to financial data or monitoring conflicts of interest – interferences that must respect the principles of legality, necessity and proportionality. On the other hand, the right to integrity, in its moral and professional dimension, underpins the standards of conduct of public officials and supports institutional mechanisms of ethics, transparency and accountability. The relationship between the two rights is not a conflictual one, but complementary: protecting public integrity justifies certain limitations on private life, while respecting privacy guarantees the legitimacy and balance of anti-corruption measures.

The analysis demonstrates that the effectiveness of anti-corruption policies depends on the state's ability to harmonize these rights through clear regulations, judicial control and adequate procedural guarantees, thus maintaining the balance between the public interest and the protection of individual freedoms.

Keywords: privacy, integrity, criminal trial, corruption, technical surveillance, proportionality, human rights.

DREPTUL LA VIAȚA PRIVATĂ ÎN CONCORDANȚĂ CU APLICAREA DREPTULUI LA INTEGRITATE DIN PUNCT DE VEDERE AL PREVENIRII ȘI COMBATERII CORUPȚIEI

Abstract

Dreptul la viață privată și dreptul la integritate reprezintă două componente esențiale ale protecției persoanei într-un stat de drept, iar interacțiunea lor devine deosebit de relevantă în contextul prevenirii și combaterii corupției. Pe de o parte, măsurile anticorupție presupun adesea ingerințe în sfera vieții private — precum supravegherea tehnică, verificarea averilor, accesul la date financiare sau monitorizarea conflictelor de interese — ingerințe care trebuie să respecte principiile legalității, necesității și proporționalității. Pe de altă parte, dreptul la integritate, în dimensiunea sa morală și profesională, fundamentează standardele de conduită ale funcționarilor publici și susține mecanismele instituționale de etică, transparență și responsabilitate. Relația dintre cele două drepturi nu este una conflictuală, ci complementară: protejarea integrității publice justifică anumite limitări ale vieții private, în timp ce respectarea vieții private garantează legitimitatea și echilibrul măsurilor anticorupție.

Analiza demonstrează că eficiența politicilor anticorupție depinde de capacitatea statului de a armoniza aceste drepturi prin reglementări clare, control judecătoresc și garanții procedurale adecvate, menținând astfel echilibrul dintre interesul public și protecția libertăților individuale.

Cuvinte-cheie: viața privată, integritatea, proces penal, corupție, supraveghere tehnică, proporționalitate, drepturile omului.

Introduction. In the architecture of the rule of law, the protection of privacy and the integrity of the person constitute fundamental limits to the coercive power of the state. In criminal procedure, these limits are constantly put to the test, especially in the investigation of corruption offences, where the methods of proof often involve significant intrusions into the private sphere of individuals. The balance between the public interest in combating corruption and the need to protect fundamental rights thus becomes an exercise in legal finesse.

In this way, the protection of privacy and the integrity of the person constitute a hard core of fundamental rights, being the expression of human dignity and the limits that the state cannot exceed in the exercise of its coercive authority. In criminal proceedings, even if these rights are subject to limitations justified by the public interest in finding the truth, any interference must nevertheless respect the principles of legality, necessity and proportionality.

In the investigation of corruption offences, the tension between efficiency and the protection of fundamental rights becomes acute. Corruption is a crime par excellence hidden, committed in closed environments, between people who cooperate voluntarily. Therefore, judicial bodies frequently resort to special surveillance techniques, which can deeply affect the privacy and psychological integrity of the person concerned.

This study aimed to analyze, in a doctrinal and comparative manner, the way in which the right to privacy and the right to integrity must be protected in the application of criminal procedural norms, especially in the context of preventing and combating corruption.

Methods and materials applied. The analysis of the interference between the right to privacy, the right to integrity and the application of criminal procedural norms in the context of preventing and combating corruption required a complex, interdisciplinary methodological approach deeply anchored in European standards. Since the study involved both legal and psychological, institutional and comparative dimensions, the methodology used had to reflect this plurality. In this study, the methods and materials applied were structured in such a way as to allow a rigorous assessment of procedural interferences, necessary guarantees and associated risks, in accordance with the requirements of the rule of law and European case law.

The research methods included: the analytical method of legislation, which allowed the identification of the legal limits of procedural interferences and procedural guarantees necessary to protect the privacy and integrity of the person; the jurisprudential method, essential for understanding the applicable European standards; the systemic, analytically critical method, including the analytical methods applied (risk, proportionality and systemic).

Discussions and results obtained. The right to privacy is enshrined in Art. 26 of the Constitution of Romania and Art. 8 of the ECHR, and Art. 28 of the Constitution of the Republic of Moldova. The right to physical and mental integrity is guaranteed by Art. 22 of the Constitution of Romania, Art. 24 Constitution of the Republic of Moldova, and Art. 3 of the ECHR. In criminal proceedings, these rights are reflected in the provisions of the CPC of Romania and the Republic of Moldova regarding technical surveillance, searches, interceptions and other intrusive methods.

The ECHR has established that interferences with privacy must be "prescribed by law", pursue a legitimate aim and be "necessary in a democratic society" [1, & 9 et seq.].

Corruption offences are by their nature difficult to prove. They take place in opaque environments, between persons who have an interest in concealing criminal activity.

Therefore, criminal procedural legislation allows the use of special surveillance techniques, such as interceptions of communications, environmental recordings or controlled deliveries.

However, these methods represent major interferences in private life, and their application must respect the principles of:

- *Proportionality* – the measure must be appropriate to the gravity of the act;
- *Subsidiarity* – to be used only if other less intrusive methods are insufficient;
- *Effective judicial review* – the authorization must be motivated and verifiable.

E.g., taken from the following table:

Principle	**Content**	**Relevance in anti-corruption**
Legality	The measure must be provided for by law	Avoids arbitrariness
Proportionality	The interference must be appropriate to the purpose	Limited interceptions
Subsidiarity	Other less intrusive methods must be exhausted	Avoids excessive surveillance
Judicial control	Reasoned authorization	Prevents abuses

The ECtHR's case law has penalised states in cases such as: *Kruslin v. France and Huvig v. France*, for the lack of clear guarantees regarding interceptions [2, & 21]; *Roman Zakharov v. Russia*, in which the Court criticised generalised surveillance systems [3, & 165/37]; *Teixeira de Castro v. Portugal*, in which the Court set limits on the use of undercover investigators [4, & 110].

However, criminal procedural rules represent the legal framework through which the state exercises its prerogative to investigate and punish criminal acts. In this context, interferences with private life and the integrity of the person are inevitable, but they must be strictly delimited, justified and controlled. The Criminal Procedure Code (CPC) regulates a series of intrusive measures — interceptions, technical surveillance, searches, seizure of objects, obtaining financial data, use of undercover investigators — which can profoundly affect the fundamental rights of the individual. These measures are permitted only under the conditions of compliance with the principles of legality, necessity, subsidiarity and proportionality, principles enshrined both in domestic law and in the case law of the European Court of Human Rights (ECtHR).

The interception of communications is one of the most intrusive procedural measures, because it penetrates the intimate sphere of the person, affecting not only private life, but also freedom of expression, personal autonomy and psychological integrity.

Even though Art. 139 of the Romanian Criminal Code provides that interceptions may be ordered only if there is reasonable suspicion of the commission of a serious crime, the measure is proportional to the restriction of rights, other less intrusive methods have been exhausted and there is reasoned judicial authorization, in the matter of corruption interceptions are frequently used, and the risks are considerable. In this regard, we exemplify risks such as excessive extension of the duration of surveillance, interception of conversations without criminal relevance, damage to the reputation of the person concerned, even leaks of information to the press.

The ECtHR sanctioned the lack of guarantees in the cases of *Kruslin and Huvig v.*

France, underlining the need for clear and predictable rules [2, & 21].

Home search represents a profound interference in private life, affecting not only the physical space, but also the person's sense of psychological security. Art. 157-171 of the Romanian Criminal Procedure Code regulates the conditions under which searches can be carried out.

In addition to home search, computer search allows access to personal data, communication history, private documents, and body search outlines the interference in private life, as it directly affects physical integrity.

From this point of view, interference in private life is materialized due to the risks produced in the context of anti-corruption. In this regard, we mention them through excessive media coverage of searches; damage to professional reputation; psychological pressure on the person under investigation; the possibility of abuses in the absence of rigorous judicial control.

In terms of investigative activities, corruption crimes often involve hidden financial flows, which is why judicial bodies frequently request bank data, transactions, account statements or information on assets.

Art. 153 of the Romanian Criminal Procedure Code (CPC ROM) allow the prosecutor to request data on suspicious operations from financial institutions, with the authorization of the judge of rights and freedoms. Information obtained legally as a counterweight in the fight against crime has a significant impact on private life, as it reveals the personal habits of the persons concerned and not only, family relationships, health status (through payments to clinics), religious or political orientations (through donations), etc.

Even if these tools are essential in investigating corruption, they involve major risks for the psychological integrity of the person concerned, therefore the measures must be applied with maximum caution.

The interest not often in establishing and proving criminal activity creates a personal state in the balance of legality. For example, the ECtHR case *Teixeira de Castro v. Portugal*, in which the Court established that investigators cannot provoke a person to commit a crime [4, &110], an essential aspect related to legality. In this regard, Art. 148 CPC ROM provides that the undercover investigator may participate in criminal activities only within the limits of authorization, we say in order not to give the possibility and thus restrict abuses.

Thus, in investigating corruption crimes, judicial bodies frequently use intrusive measures, such as wiretapping, technical surveillance, computer searches or the use of undercover investigators. These measures, although necessary for the discovery of facts committed in secret, can and do simultaneously affect the privacy and psychological integrity of the person concerned.

The interference between the two rights is not accidental, but structural: any interference in privacy inevitably has an impact on psychological integrity, and the psychological pressure exerted on the person can transform a legal measure into an institutional abuse.

Psychological integrity is particularly vulnerable in the context of anti-corruption, due to the fact that:

- Technical surveillance is often prolonged;
- Wiretapping can capture intimate, family or professional conversations;
- Searches are excessively publicized;
- Information leaks affect the person's reputation;
- Psychological pressure during hearings can be intense.

Technical surveillance thus produces a self-censorship effect, affecting freedom of expression and personal autonomy. The person being monitored may develop anxiety, a sense of insecurity, deterioration of social relationships, damage to professional reputation, etc. As author Daniel Cristea [5, p.135] opined about such measures, the mere suspicion of surveillance has created an opaque state among the population, namely the right to express oneself through technical means (telephones) is altered due to the restraints, producing an interference in the freedom to communicate freely.

The ECtHR has also recognized these effects. For example, in the case of *Roman Zakharov v. Russia*, the Court emphasized that secret surveillance has a psychological impact even when the person is not aware of its existence [3].

In Romania, in most cases the investigation of corruption cases is often accompanied by intense media coverage. Although transparency is necessary in a democratic state, there are leaks of information from criminal files, which affect the presumption of innocence, the most important in establishing the truth until the final solution. Of course, professional reputation, family life, and psychological integrity are also affected in this segment of interference with private life. Of course, the effects are multiple and lead to other forms that affect private life, not only of the person in question, but also of others, which are produced by psychological pressure on the person and the family, thus affecting the professional career, causing irreversible damage even in the event of acquittal.

The European Court of Human Rights has sanctioned such practices. For example, in the case of *Bédat v. Switzerland*, the Court emphasized that the disclosure of information from files can affect the fairness of the procedure and the dignity of the person [6, & 51 et seq.].

Searches, especially home and computer searches, represent as we have specified above, profound interferences in private life. They can affect the dignity of the person through intrusion into personal space, exposure of intimate objects, access to sensitive data, excessive media coverage.

In this sense, the search can generate acute stress, feelings of humiliation, fear, including loss of trust in institutions.

Regarding the undercover investigator, the use of this category is essential in investigating corruption, but it involves major risks for the psychological integrity of the person concerned, such as the possibility of incitement to commit a crime or manipulating his behavior, inducing intense psychological pressure, etc.

For example, the ECtHR case *Teixeira de Castro v. Portugal*, in which the Court established that incitement to commit a crime is incompatible with the right to a fair trial [4, & 110].

Example regarding the status of these measures in the following table:

Procedural measure	**Infringement of privacy**	**Infringement of mental integrity**	**Specific risks**	**Observations**
Interceptions	Very high	High	Self-censorship, anxiety	Requires strict control
Technical surveillance	High	High	Psychological pressure	Duration must be limited
Searches	High	Medium	Humiliation, stress	Avoidance of media coverage

Undercover investigator	Medium	Very high	Manipulation, provocation	Judicial control
Leaks of information	High	Very high	Stigmatization	Disciplinary sanctions

With regard to European law, the principles of proportionality and necessity are the fundamental pillars limiting state interference in private life and the integrity of the person. The criteria of Art. 8 ECHR, provided for by law, pursues a legitimate aim and is necessary in a democratic society, are rigorously applied in the case law of the European Court of Human Rights (ECHR), in particular in cases concerning technical surveillance, wiretapping, searches and the use of undercover investigators.

In the context of preventing and combating corruption, where interferences are frequent and often extensive, the proportionality test becomes essential to prevent institutional abuses.

However, to assess the proportionality of interferences, the ECHR has developed a three-part test, regarding the necessity of the interference, in which states must demonstrate that the interference is indispensable for achieving the legitimate aim. In the matter of corruption, this presupposes the existence of a reasonable suspicion, the impossibility of using less intrusive methods and the occult nature of the act. In addition to this interference, this measure must be appropriate and not go beyond what is necessary. E.g. the ECtHR sanctioned excessive measures in the cases of *Kruslin and Huvig v. France*, where the interceptions were devoid of procedural guarantees [2, & 21]. Also the verification of procedural guarantees, in which the Court verifies whether there is effective judicial review, temporal limitation, detailed reasoning, the possibility of challenging the measure.

E.g.:

– The case of *Roman Zakharov v. Russia*, the Court established that surveillance systems must contain clear guarantees against abuse, including clear criteria for authorization, independent control, subsequent notification of the individual, where possible, destruction of irrelevant data. [3, & 229, 231]

– The case of *Big Brother Watch v. the United Kingdom*, the Court emphasized that mass surveillance is incompatible with art. 8 ECHR if there are no clear criteria for data selection, judicial review, guarantees against arbitrary access [7].

– *Digital Rights Ireland Ltd* case, the CJEU invalidated the Data Retention Directive, considering that the interference was disproportionate, there were no sufficient guarantees, the data were retained regardless of the existence of a suspicion [8, & 51 et seq.].

– *Tele2 Sverige AB* case, the CJEU established that access to traffic data must be limited to serious crimes, subject to prior authorization, proportionate to the purpose pursued [9, &113-119, 125].

In conclusion, Romania and the Republic of Moldova must continue to harmonize their legislation and judicial practice with the case law of the ECtHR and the CJEU, in order to prevent abuses and to ensure a genuine balance between the efficiency of the fight against corruption and the protection of human dignity.

The application of criminal procedural rules in the investigation of corruption offences involves a delicate balance between two apparently contradictory imperatives:

• The efficiency of the criminal prosecution, necessary for the discovery of acts committed in secret;

• Protection of fundamental rights, especially privacy and psychological integrity.

This balance is not only a moral requirement, but a legal obligation derived from the

Constitutions of the states (ROM and RM), the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

Therefore, the methods of applying criminal procedural rules must be built on three pillars:

1. *Preventive methods* – avoiding unjustified interferences;

2. *Operative methods* – proportional and controlled application of intrusive measures;

3. *Control methods* – verifying legality and sanctioning abuses.

Preventive methods have the role of reducing the risk of unjustified interferences in privacy and the integrity of the person. They are essential in a state governed by the rule of law, because they prevent abuses before they occur.

Prosecutors, judicial police officers and judges of rights and freedoms in ROM and criminal investigation bodies and investigative judges in RM, must be continuously trained in the ECtHR jurisprudence on Art. 8 and Art. 3 and not only, on the CJEU standards on data protection, on modern non-intrusive investigation techniques, and on the ethics of using special means.

Important aspect – before authorizing an intrusive measure, the prosecutor must conduct an assessment of the risks regarding the violation of privacy, the psychological impact on the person, the risk of information leaks, including the risk of provocation to commit a crime.

The application of the second method, the operative one, represents the concrete application of the criminal procedure rules, in compliance with the principles of legality, necessity and proportionality. Their application must aim to comply with the judge's authorization, temporal limitation, data filtering and destruction of irrelevant data. In this regard, searches must be thoroughly motivated in order to order the measure as a result of the intrusion into private life, carried out with respect for the dignity of the person, limited to the object of authorization and rigorously documented.

At the same time, the use of investigators must also comply with criteria such as the prohibition of provocation to commit a crime [4, & 110] and be limited to the role of legality in the intrusion into private life.

Control methods are essential for preventing and sanctioning abuses. In this sense, there must be judicial control over the approval of measures. The judge of rights and freedoms must thus verify the existence of reasonable suspicion, the proportionality of the measure, the necessity of interference, compliance with the limits of authorization. At the same time, at the state level there must be control by the Superior Council of Magistracy (CSM), which must sanction information leaks, the unjustified use of intrusive measures, the lack of motivation, and abuses by investigators. Parliamentary control must also supervise the activity of intelligence services involved in technical support for interceptions. Last but not least, constitutional control, through which the Constitutional Court must verify legislatively and upon any notification and information the compliance of procedural norms with fundamental rights, the limits of interferences and procedural guarantees.

We mention them because in a state governed by law, policies to prevent and combat corruption must be built on a balance between the efficiency of investigating criminal acts and the protection of fundamental rights. Even if corruption represents a systemic threat to the functioning of public institutions, the fight against it cannot be justified by sacrificing the right to privacy and the integrity of the person.

In this context, the integration of the two rights in the architecture of anti-cor-

ruption policies becomes an essential condition for the legitimacy of state action. This integration presupposes:

- A holistic approach, combining prevention, education and sanction;
- A coherent regulatory framework, harmonized with European standards;
- Efficient institutional mechanisms for control and accountability;
- Procedural transparency, within the limits of the confidentiality of the investigation.

Anti-corruption policies must include explicit guarantees regarding the protection of privacy. In the absence of these guarantees, there is a risk that anti-corruption measures will be perceived as instruments of political or institutional pressure.

In this regard, there must be clear rules on the use of special techniques, such as limiting the duration of interceptions, for authorization and for the destruction of irrelevant data. In addition to these rules, compliance with Regulation (EU) 2016/679 (GDPR) and Directive (EU) 2016/680, regarding the protection of personal data in the procedure, with limiting access to sensitive data and periodic audits.

Public reporting on the use of special techniques, statistics on the duration and effectiveness of measures, secure reporting mechanisms and protection against retaliation, are essential techniques and rules in protecting enforcement and intrusion into private life.

Essentially, an effective anti-corruption policy is not one that maximizes interferences, but one that optimizes them, respecting the dignity of the person and European standards.

Conclusions. The analysis of the right to privacy and the right to integrity in the application of criminal procedural rules, especially in the context of preventing and combating corruption, highlights a structural tension between two fundamental imperatives of the rule of law: the efficiency of criminal investigation and the protection of human dignity. This tension cannot be eliminated, but can be managed through a coherent regulatory framework, through solid procedural guarantees and through an institutional culture oriented towards the respect of fundamental rights.

The right to privacy and the right to integrity represent essential limits to the coercive power of the state. They are not obstacles to the fight against corruption, but conditions for its legitimacy. Any interference in the private sphere must be provided for by law, necessary, proportionate and subject to effective judicial review. The case law of the ECTHR and the CJEU has reinforced these requirements, systematically sanctioning states that have used intrusive measures without adequate guarantees.

Investigating corruption crimes requires the use of special surveillance techniques, which can profoundly affect the privacy and psychological integrity of the person concerned. Interceptions, computer searches, the use of undercover investigators or obtaining financial data are indispensable measures in uncovering facts committed in secret. However, their application must be strictly limited, thoroughly motivated and rigorously monitored, in order to prevent institutional abuses.

Interference between privacy and psychological integrity is inevitable in the context of anti-corruption. Prolonged technical surveillance, media exposure, information leaks or psychological pressure exerted during hearings can profoundly affect the dignity of the person. Therefore, anti-corruption policies must include not only repressive measures, but also psychological protection mechanisms, procedures for limiting interference and disciplinary sanctions for violations of fundamental rights.

The integration of fundamental rights into the architecture of anti-corruption poli-

cies is essential for maintaining public trust in judicial institutions. An effective anti-corruption policy is not one that maximizes interferences, but one that optimizes them, respecting European standards and the dignity of the person. The comparative experience of European states (France, Germany, Italy), shows that the efficiency of the fight against corruption is compatible with a high level of protection of privacy and integrity, when there are solid procedural guarantees and effective judicial control.

The general conclusion is that the rule of law cannot exist without the protection of privacy and integrity of the person, and the fight against corruption cannot be credible if it sacrifices these values. The balance between efficiency and fundamental rights is not only a legal requirement, but also a condition of democratic legitimacy. Only a criminal procedural system that respects human dignity can ensure a genuine and sustainable fight against corruption.

Bibliographical references

1. Decision of the Constitutional Court No.51 of 16 February 2016 on interferences with private life. In: Official Gazette No.190 of 14 March 2016.
2. ECtHR Decisions Kruslin v. France, of 24 April 1990, series A No.176-A; Huvig v. France, of 24 April 1990, series A No.176-B. In: National Security and the Case Law of the European Court of Human Rights. Available: https://ier.gov.ro/wp-content /uploads/2020/10/RC-Securite-nationale-et-jurisprudence-europeenne_2013_RO.pdf (visited 30.03. 2026).
3. ECtHR Decision in the case of Roman Zakharov v. Russia, of 4 December 2015, No.47143/06. Available: https://ier.gov.ro/wp-content/uploads/cedo/Roman-Zakharov-impotriva-Rusiei-MC.pdf (visited 30.03. 2026).
4. ECtHR Judgment in the case of Teixeira de Castro v. Portugal, of 9 June 1998, Collection of Judgments and Decisions 1998-IV. In: National Security and the Case Law of the European Court of Human Rights. Available: https://ier.gov.ro/wp-content /uploads/2020/10/RC-Securite-nationale-et-jurisprudence-europeenne_2013_RO.pdf (visited 30.03. 2026).
5. Cristea D. Protection of personal data in criminal proceedings. Monograph. Bucharest: Pro Universitaria Publishing House, 2023, 246 p.
6. ECtHR Judgment in the case of Bédat v. Switzerland, of 29 March 2016, No.56925/08. Available: https://hudoc.echr.coe.int/eng?i=001-176082 (visited 30.03. 2026).
7. ECtHR Judgment in the case of Big Brother Watch and Others v. the United Kingdom, of 13.08.2018, No.58170/13, 62322/14 and 24960/15. Available: https://hudoc.echr.coe.int/eng?i=001-186629 (visited 30.03. 2026).
8. Judgment of the CJEU in the case of Digital Rights Ireland, of 8 April 2014, No.C-293/12. Available: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62012CJ0293 (visited 30.03. 2026).
9. Judgment of the CJEU in the case of Tele2 Sverige AB, of 21 December 2016, No.C-203/15. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:62015CJ0203 (visited 30.03. 2026).

CZU 341.7:343.9 **DOI: https://doi.org/10.5281/zenodo.20846861**

INTERNATIONAL NEGOTIATION AS A TOOL FOR CRIMINAL JUSTICE COOPERATION IN PREVENTING AND COMBATING TRANSNATIONAL CRIME

Ioan-Ciprian DOSPINOIU,
PhD Student,
Free International University of Moldova,
Officer, Center for International Police Cooperation, Bucharest,
Romania
ORCID: 0009-0006-4941-2120

Abstract

The rapid development of contemporary international relations, coupled with the rise in transnational criminal activity, has led to the consolidation of international negotiation as a fundamental tool for criminal justice cooperation among states. In the context of globalization, international negotiations contribute to the development of the multilateral legal mechanisms necessary to prevent and combat transnational organized crime, including through the development of the regulatory framework established by the United Nations Convention against Transnational Organized Crime (the Palermo Convention) and through the strengthening of institutional cooperation among the competent authorities of states.

The article analyzes the role of international negotiation as a legal mechanism for resolving international disputes and as a tool for harmonizing national criminal policies to combat organized crime, terrorism, human trafficking, and other forms of cross-border crime. At the same time, the article highlights the functions of international negotiation in the development of international judicial cooperation through specialized structures such as Europol, Eurojust, and Interpol.

The research findings demonstrate that international negotiation constitutes an essential mechanism for strengthening regional and global security and for developing effective legal instruments for cooperation in preventing and combating transnational crime.

Keywords: international law, international negotiations, international security, criminal justice cooperation, transnational crime, crime prevention, international judicial cooperation.

NEGOCIEREA INTERNAȚIONALĂ CA INSTRUMENT AL COOPERĂRII JURIDICO-PENALE ÎN PREVENIREA ȘI COMBATEREA CRIMINALITĂȚII TRANSNAȚIONALE

Abstract

Dezvoltarea accelerată a relațiilor internaționale contemporane, corelată cu intensificarea fenomenelor infracționale transnaționale, a determinat consolidarea negocierii internaționale ca instrument fundamental al cooperării juridico-penale între state. În contextul globalizării, negocierile internaționale contribuie la elaborarea mecanismelor juridice multilaterale necesare prevenirii și combaterii criminalității organizate transnaționale, inclusiv prin dezvoltarea cadrului normativ instituit prin Convenția Organizației Națiunilor Unite împotriva criminalității organizate transnaționale (Convenția de la Palermo) și prin consolidarea cooperării instituționale între autoritățile competente ale statelor.

Articolul analizează rolul negocierii internaționale ca mecanism juridic de soluționare a diferendelor internaționale și ca instrument de armonizare a politicilor penale naționale în vederea combaterii criminalității organizate, terorismului, traficului de persoane și altor forme de criminalitate transfrontalieră. Totodată, sunt evidențiate funcțiile negocierii internaționale în dezvoltarea cooperării judiciare internaționale prin intermediul structurilor specializate precum Europol, Eurojust și Interpol.

Rezultatele cercetării demonstrează că negocierea internațională constituie un mecanism esențial pentru consolidarea securității regionale și globale și pentru dezvoltarea unor instrumente juridice eficiente de cooperare în prevenirea și combaterea criminalității transnaționale.

Cuvinte-cheie: drept internațional, negocieri internaționale, securitate internațională, cooperare juridico-penală, criminalitate transnațională, prevenirea criminalității, cooperare judiciară internațională.

At the same time, the intensification of transnational criminal phenomena is prompting a reassessment of the role of international negotiations in the architecture of international criminal justice cooperation, as they facilitate the harmonization of intervention mechanisms and the development of effective legal instruments to prevent and combat organized crime [6].

In the absence of negotiation, international relations would be characterized exclusively by direct confrontations, which would generate systemic instability at the global level and undermine the protection of fundamental human rights. Thus, international negotiation must be analyzed as a preventive instrument of collective security, being an integral part of the legal mechanisms for conflict management [1].

At the same time, the role of international negotiation extends to combating organized crime, terrorism, and cross-border trafficking—areas in which international cooperation is indispensable for ensuring the effectiveness of interventions by competent authorities [5].

Methods and materials applied. In conducting this research, methods specific to the field of public international law and international judicial cooperation in criminal matters were employed, namely the method of comparative legal analysis, the method of interpreting international legal norms, and the method of doctrinal analysis.

The materials used consisted of specialized works in the field of public international law and international judicial cooperation, relevant international normative documents, such as the United Nations Convention against Transnational Organized Crime (the Palermo Convention), as well as legal instruments adopted within the framework of European and international cooperation in the field of combating transnational crime.

Furthermore, the research focused on analyzing the institutional mechanisms for criminal justice cooperation developed within specialized international organizations, such as Interpol, Europol, and Eurojust, highlighting their role in facilitating the exchange of operational information and coordinating cross-border investigations.

Discussions and results obtained. I. Characteristics, Objectives, and Functions of International Negotiation. Diplomatic negotiation is one of the most important tools of international cooperation, used to manage conflicts, establish strategic partnerships, and promote the interests of states within the contemporary international system [3].

International negotiations are not merely a means of securing specific advantages, but rather a form of structural cooperation indispensable to maintaining the stability of the international system. In this context, international criminal justice cooperation achieved through negotiations directly contributes to strengthening mechanisms for preventing and combating transnational crime [6].

The complexity of international negotiations stems from the diversity of the actors involved, the cultural and legal differences between states, and the need to reconcile their divergent interests.

Another defining feature of international negotiations is the influence of geopolitical factors on the strategies adopted by states. Changes in the international context can lead to adjustments in negotiation objectives and a redefinition of the political and legal

priorities of the actors involved [2].

The lengthy duration of negotiations is a key characteristic of the process, as international agreements involve complex processes of consultation and legislative harmonization [4].

The rules of international law constitute the fundamental legal framework for international negotiations, ensuring respect for the principles of legality and the sovereign equality of states [3].

II. International Negotiation: A Means of Resolving International Disputes. International negotiation is a fundamental legal tool for resolving disputes between states and international organizations, serving as an effective alternative to the use of force in international relations [4].

In particular, negotiation is frequently used in the context of international legal cooperation in criminal matters in areas such as the extradition of offenders, international legal assistance in criminal matters, the transfer of sentenced persons, and the fight against cross-border organized crime [5].

These legal mechanisms are reinforced by multilateral legal instruments adopted under the United Nations Convention against Transnational Organized Crime (the Palermo Convention), which establishes the general legal framework for international cooperation in preventing and combating transnational organized crime [6].

At the same time, operational cooperation is supported by the work of specialized international organizations such as Interpol, which facilitates the rapid exchange of operational information among the competent authorities of states; Europol, which supports the strategic analysis of cross-border criminal phenomena at the European level; and Eurojust, which contributes to the coordination of complex international criminal investigations.

Results achieved. An analysis of the role of international negotiations highlights the fact that they are an essential tool for international cooperation in criminal matters, contributing to the development of effective mechanisms for preventing and combating transnational crime.

The research findings confirm that international negotiations facilitate the harmonization of national laws and the development of common legal instruments for combating organized crime.

At the same time, the implementation of the Palermo Convention has helped strengthen the international legal framework for combating transnational organized crime, facilitating judicial cooperation among states and the development of effective mechanisms for cross-border investigations.

Furthermore, the work of Europol, Eurojust, and Interpol demonstrates the importance of international institutional cooperation in combating contemporary crime and in developing common standards for criminal justice intervention.

An analysis of the legal mechanisms developed through international negotiations highlights the fact that the effectiveness of criminal justice cooperation depends directly on the degree of institutionalization of relations between the competent authorities of states. In this regard, the use of multilateral legal instruments adopted under the auspices of the United Nations, as well as the strengthening of operational cooperation through Europol, Eurojust, and Interpol, contributes to the development of integrated mechanisms for preventing and combating transnational organized crime.

At the same time, international negotiations facilitate the harmonization of national legislation in the field of international judicial cooperation, allowing the domestic legal

framework to be adapted to the international legal standards established by relevant multilateral conventions. This harmonization contributes to streamlining procedures for extradition, international legal assistance in criminal matters, and the transfer of convicted persons, thereby strengthening states' capacity to respond in a coordinated manner to the challenges posed by contemporary transnational crime.

At the same time, the development of institutional cooperation mechanisms between national judicial authorities and specialized international bodies contributes to increasing the efficiency of cross-border investigations and reducing the risks arising from jurisdictional fragmentation, an essential aspect for ensuring legal certainty in the current context of the globalization of criminal activity.

Conclusions. International negotiation is a complex and dynamic process conducted within a well-defined legal framework, contributing to the maintenance of stability in international relations and the development of criminal justice cooperation among states.

In the context of globalization, international negotiation has become an indispensable tool for preventing and combating transnational crime, facilitating the development of effective cooperation mechanisms among competent authorities.

Thus, international negotiation serves as a guarantee of international stability and security and is an essential element of the contemporary global legal architecture.

Bibliographical references

1. Aurescu B. The System of International Jurisdictions. 2nd ed. Bucharest: C.H. Beck Publishing House, 2013.
2. Marinescu D.-M. Promoting Equal Opportunities and Migration Control. Bucharest: 2025.
3. Moldovan C. Public International Law. Bucharest, 2024.
4. Năstase A., Bogdan A. Public International Law. Bucharest: C.H. Beck Publishing House, 2011.
5. Onica-Jarka Bianca. Structures of Cooperation. Bucharest: C.H. Beck, 2009.
6. Popescu M. R. Public International Law. Bucharest, 2023.
7. Rădulescu, D.-L. International Institutions. Bucharest: Universul Juridic Publishing House, 2012.

CZU 341.34:94(470+520)=111 **DOI: https://doi.org/10.5281/zenodo.20914644**

THE SITUATION OF JAPANESE MILITARY PERSONNEL HELD IN PRISONER-OF-WAR CAMPS IN THE USSR

Simion CARP,
PhD, University Professor,
Senior Scientific Researcher, Institute of Scientific Research and Comparative Law,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-4772-8325

Vladislav GROZINSCHI,
University Assistant, Inspector,
Department of Military Training and Professional Interventions,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0007-6760-254X

Radion ROTARU,
University Assistant, Chief Commissioner,
Department of Military Training and Professional Interventions,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0009-0006-2164-2522

Abstract

The present study focuses on Japanese military personnel, as well as combatants of other nationalities integrated into Japanese troops stationed in Manchuria. The main objective of this article is to analyze the complexity of the detention regime within the Soviet concentration camp system, with particular emphasis on living conditions, abuses committed by camp administrations, and the devastating impact of the hostile environment on the psychological condition of prisoners.

At the same time, the investigation examines judicial proceedings initiated against war criminals, the dynamics of relations between the Soviet civilian population and Japanese prisoners, as well as the contacts of the latter with our compatriots detained in the same spaces of captivity. The study is based on rigorous documentation, making use of unpublished archival materials, the normative framework of the period, as well as an extensive body of specialized literature and memoirs of survivors published both domestically and abroad.

Keywords: military personnel, war crime, wounded, weapon, prisoner of war, forced labor, abuse, inhuman treatment, Japanese prisoners, detention, testimonies, human dignity.

SITUAȚIA MILITARILOR JAPONEZI AFLAȚI ÎN LAGĂRELE PENTRU PRIZONIERI DE RĂZBOI DIN URSS

Abstract

Studiul de față se concentrează asupra militarilor japonezi, precum și a combatanților de alte naționalități integrați în trupele nipone dislocate în Manciuria. Obiectivul principal al acestui articol este de a

analiza complexitatea regimului de detenție din sistemul concentraționar sovietic, punând accent pe condițiile de viață, abuzurile exercitate de administrația lagărelor și impactul devastator al mediului ostil asupra psihicului prizonierilor.

Totodată, investigația vizează procesele judiciare intentate criminalilor de război, dinamica raporturilor dintre populația civilă sovietică și prizonierii niponi, precum și contactele acestora din urmă cu conaționalii noștri aflați în aceleași spații de detenție. Demersul este fundamentat pe o documentare riguroasă, valorificând materiale de arhivă inedite, cadrul normativ al epocii, precum și o vastă literatură de specialitate și memorii ale supraviețuitorilor, publicate atât în țară, cât și peste hotare.

Cuvinte-cheie: militar, crimă de război, răniți, armă, prizonier de război, muncă forțată, abuz, tratament inuman, prizonieri japonezi, detenție, mărturii, demnitate umană.

Introduction. At the beginning of the third millennium, the collective security of humanity is inconceivable without the fundamental contribution of international institutions gradually established throughout the evolution of society. It is difficult to estimate the scale of human losses in the absence of the International Red Cross Movement, founded in 1863, whose central mission remains humanitarian assistance and the protection of victims in belligerent states.

Armed conflicts inevitably generate the phenomenon of captivity. Considering that many combatants either voluntarily lay down their arms or are captured by opposing forces, the international community developed strict legal norms to ensure the protection of these vulnerable categories. The foundations of the legal regulation concerning prisoners of war, the wounded, and civilians were laid in Geneva in 1864. Subsequently, this framework was strengthened through the Hague Conventions (1899 and 1907) and, most importantly, through the Geneva Convention of 27 July 1929—an essential legal instrument for the protection of military personnel in camps and of the civilian population during armed conflicts.

However, the experience of the Second World War demonstrated the fragility of these norms. Belligerent states frequently neglected international provisions, imposing arbitrary detention regimes dictated by radical ideologies—Nazism and communism—which transformed prisoner-of-war camps into spaces characterized by the denial of human dignity.

Methods and materials applied. The methodology applied in the elaboration of this study is based on an articulated set of historical and legal research methods. The process included documentary and critical analysis through the rigorous examination of archival sources, official acts, and administrative documents concerning the organization of the Soviet camp system, as well as the comparative method, through which the norms of international humanitarian law were assessed against the actual realities of the detention regime.

At the same time, the analysis of narrative sources made it possible to integrate memoirs and testimonies of researchers from different ideological backgrounds, while historical synthesis and contextual analysis facilitated the placement of the phenomenon within a coherent explanatory framework related to the political and military realities of the period. In addition, systemic and classificatory methods were used to structure information concerning the hierarchy of the concentrationary space, alongside the interpretative method, essential for deciphering the deeper meanings of the events under study in correlation with national and international bibliography.

Discussions and results obtained. The global conflagration of the mid-twentieth century highlighted a profound crisis of international law, as the principal belligerent parties neglected the provisions of the Geneva Convention and replaced them with arbitrary

regulations derived from Nazi and communist ideologies.

Within the Soviet sphere, the authorities justified their disregard for international treaties by arguing that German soldiers and their allies, due to the atrocities they had committed, could not benefit from prisoner-of-war status. In reality, however, this position reflected the repressive nature of the Stalinist totalitarian regime, resulting in inhuman and degrading detention conditions throughout the USSR camp network.

A component of this system was deployed on the territory of the Moldavian Soviet Socialist Republic, with the activity of these units being directly subordinated to the decision-making center in Moscow. Although recent historiography in the Republic of Moldova has begun to explore the issue of wartime captivity, new archival sources indicate the existence of research gaps that require deeper investigation. Limited attention has so far been paid to the situation of prisoners captured in the Far East during the final stages of the global conflict, particularly Japanese military personnel and combatants of other nationalities integrated into Japanese troops stationed in Manchuria.

Starting from these premises, the present article aims to introduce new data into scientific circulation regarding the detention regime of Japanese prisoners. The research objectives include the analysis of abuses committed by the Soviet administration, the impact of the hostile environment on prisoners' psychological balance, judicial proceedings initiated against war criminals, and the social interactions between prisoners, the local civilian population, and our compatriots held in captivity. The study is based on rigorous documentation, making use of unpublished archival materials, the normative framework of the period, as well as journals and memoirs published both domestically and abroad.

The analysis of these materials revealed that Soviet authorities encouraged repressive bodies to apply inhuman and degrading treatment to prisoners of war detained in USSR camps.

Against this background, communist propaganda undertook systematic efforts to create a negative image of enemy soldiers in the eyes of the civilian population. Public trials against alleged war criminals were regularly organized, and severe criminal penalties were imposed.

Beyond the administration of justice, these actions pursued another objective: to erase from the memory of Soviet citizens the catastrophic defeats suffered by the Red Army on the battlefield during 1941–1942, caused largely by the physical liquidation of experienced military personnel during the purges organized by Stalin's repressive apparatus. At the same time, the crimes of the Soviet regime against its own population—repressions, deportations, and famines that depopulated entire regions of the Soviet Union before the war—also had to be obscured.

Propaganda also influenced society to forget relatives who had lost their lives for merely speaking against the regime and to accept as heroes the uniformed executioners who had long ceased to be human.

Thus, in order to glorify the Soviet regime, the enemy was demonized and hatred toward prisoners of war detained in the USSR was actively stimulated. As a result, camp administrations and guards applied violence and committed crimes against the individuals under their custody.

Numerous cases were reported in which Soviet soldiers killed and robbed prisoners of war during escort. "In addition to those killed, many others died as a result of wounds, diseases, inhuman detention conditions, exhausting forced labor, malnutrition, lack of warm clothing, dystrophy, hypothermia, etc." [1, p. 51-52].

The cemeteries where the deceased were buried disappeared over time. Such re-

alities occurred because Soviet authorities followed their own internal normative acts concerning the treatment of prisoners of war.

According to Romanian scholars, "the international legal status of prisoners of war in the first half of the twentieth century was defined by the 'Regulations concerning the Laws and Customs of War on Land', annexed to the Fourth Hague Convention of 1907, and by the Geneva Convention concerning the Treatment of Prisoners of War of 27 July 1929" [2].

During the Second World War, these two normative acts of international law had different legal force. The norms established by the Hague Convention were mandatory for all belligerent states, whereas the provisions of the 1929 Geneva Convention were valid only among signatory states. The Soviet government refused to participate in the Geneva Conference of the summer of 1929. The USSR leadership considered that, under such circumstances, it should not assume obligations toward the "class enemy". At the time of its adoption, the 1929 Geneva Convention was perceived in Moscow as an element of bourgeois justice, incompatible with communist ideology. In the Soviet Union, the legal status of prisoners of war, both during and after the war, was established on the basis of the "Regulation on Prisoners of War", adopted on 1 July 1941 by the Council of People's Commissars of the USSR. This regulation provided for detention conditions, forced labor obligations, and criminal and disciplinary liability for refusal to obey orders" [3].

Evidently, this document only formally ensured prisoners' security under an extremely rigorous regime that human beings could barely endure. The situation was further aggravated by the fact that prisoner-of-war camps were subordinated to the NKVD of the USSR.

In April 1943, Soviet security structures were reorganized: „the NKVD was divided into the NKVD and the NKGB. In January 1945, within the NKVD, the Main Directorate for Work with Prisoners of War and Interned Civilians was established, under whose control were the camps for German soldiers and military personnel from the armies of Germany's allied countries" [4 p. 50].

Russian authors specify that "the basic document regulating detention conditions and labor use of German prisoners was Resolution No. 1798-800 of 1 July 1941 of the Council of People's Commissars, implemented through NKVD Order No.032 of 21 July 1941" [5, p. 497].

They also note that prisoners of war on Soviet territory were treated inhumanly because camp administrations did not observe the norms established by the Hague Convention of 1907 and the Geneva Convention of 1929. Soviet legislation did not include "norms prohibiting the use of prisoners in harmful and life-threatening labor" [5 p. 497-498].

Similar irregularities were identified by other scholars. It was also noted that "nothing was provided regarding the assurance of legal defense for prisoners of war under criminal investigation. At the same time, Soviet authorities ignored the obligation to inform the International Committee of the Red Cross and the government of the prisoner's state of citizenship when a prisoner was sentenced to death during detention" [5, p. 498].

These realities indicate serious violations of the fundamental rights of prisoners and emphasize the discrepancy between declared norms and actual practices in Soviet camps. Japanese prisoners of war who arrived in such camps at the end of the Second World War also faced major hardships. They were escorted from Manchuria, where the final confrontations between the Soviet Army and Japanese troops deployed there had taken place.

Due to historical circumstances, among Soviet troops there were also our compatriots: "In the spring and summer of 1944, the Bolshevik authorities, having returned to the so-called MSSR, mobilized all men aged between 18 and 50 to the Eastern Front—people

who did not know the Russian language and had no combat experience—and sent them to the most dangerous areas of the front as 'cannon fodder.' In those battles, Bessarabians lost approximately 50,000 men. But for Bessarabians, the war did not end with Germany's capitulation on 9 May 1945. Many of them were sent to the Far East, to the war against Japan" [7, p. 228]. One example is a resident of Baiuș village, Leova district: "Cernenchii Artiom. Veteran of the Second World War. He ended the war in Manchuria. Mobilized on 25 March 1944. Demobilized on 20 November 1945" [8, p. 233].

It is known that in 1945, "...on 6 August, the first atomic bomb was dropped on Hiroshima... 9 August—the day when the second atomic bomb destroyed the city of Nagasaki... At 8:47 a.m. (Japan time), on 10 August, Tokyo sent telegrams to the Japanese legations in the neutral capitals of Bern and Stockholm to be transmitted to the Allied governments, expressing its agreement to capitulate, on the condition that the Emperor's prerogatives be preserved" [9, p. 792].

Considering the authority enjoyed by Emperor Hirohito among the Japanese population, U.S. authorities agreed to preserve his status even after Japan's defeat in 1945. Thus, "the American conquerors were surprised to discover how little Emperor Hirohito's power had actually diminished. Given the chaos that could have resulted from abolishing the monarchy, and because he had played an important role in calming the conflict and unifying war-divided Japan, the Emperor retained his position." Its ancient mission to "respect harmony" saved the tradition" [10, p. 50-51].

More than half a million Japanese soldiers isolated in the Far East were forced to surrender to Soviet troops. According to Romanian scholars Laurențiu Constantiniu, Ilie Șchipor, and Vitalie Văratic, one Soviet report signed on 2 November 1945 stated that Red Army units had taken 608,360 persons prisoner during the war with Japan, including: "573,821 Japanese; 19,962 Manchurians; 7,032 Koreans; 3,699 Chinese; 2,345 Mongols; and 1,501 persons of other nationalities or ethnicities" [3 p. 574].

A group of Russian authors published an excerpt from the informational note signed by the Chief of Staff of the Armed Forces of the USSR A.I. Antonov and addressed to V.M. Molotov on December 8, 1945, in which the following is reported: "I inform you about the number of Japanese prisoners captured by the troops of the Red Army in the Far East. According to the data provided by the NKVD, a total of 608360 prisoners of the Japanese army, including Koreans and Manchurians, were taken: generals – 158, officers – 18068, sergeants and soldiers – 590134. Of this number, 368478 Japanese were transported to camps in the USSR for labor, of whom officers – 8112 persons; 58500 Japanese remained for labor outside the territory of the USSR, including in Mongolia; 18500 Japanese are on the way to NKVD camps; 92784 Japanese are in the custody of the Soviet military command and will be escorted to NKVD camps..." [11].

The same authors write that: "Most Japanese ended up in captivity beginning on August 16, 1945, from the battlefields of Manchuria, North Korea, South Sakhalin, and the Kuriles [...] where the Japanese suffered heavy losses. On August 12, senior officers and army generals were captured [...]. A large part of the prisoners were sent to labor camps to be used in construction. In accordance with the Resolution of the GKO USSR of August 23, 1945, 500 thousand Japanese prisoners arrived in camps located on the territory of Primorye and Altai regions, the Chita and Irkutsk regions, on the territory of the Buryat-Mongol ASSR, the Uzbek SSR, for the construction of the Baikal-Amur railway line, etc." [11].

It is known that Japanese soldiers who were in Soviet captivity did not prefer to write memoirs. This informational gap was supplemented by some Japanese writers, among

whom is also Haruki Murakami, who wrote about the detention conditions of Japanese prisoners in Soviet camps as well as about the situation of people convicted for political reasons in the Soviet Union, mentioning that the law of the camp was in fact: "...the law of the jungle according to which the strongest survived. When the workforce began to diminish, new wagons of prisoners arrived. Sometimes about twenty percent of them died on the way, but no one worried because of that. Most were Russians and Eastern Europeans brought from the West" [12 p. 635].

The same author writes about representatives of other nationalities brought to Siberia: "In the mine there worked not only Japanese prisoners, but also Russian criminals, political prisoners, and former officers rejected by Stalin's system. These were usually people with higher education and of exceptional quality [...] Besides Russians, the trains also brought Poles, Hungarians, and other foreigners, some of them with darker skin (Armenians or Georgians, I suppose)" [12. p. 613].

Analyzing what Haruki Murakami wrote, it is worth recalling the novel of the writer Nicolae Dabija published in 2009, "Tema pentru acasă", in which the drama of Bessarabians deported to Siberia and sentenced to forced labor in Soviet prisons full of: "spies, saboteurs, terrorists, right-wing deviationists, left-wing deviationists, Mensheviks, Socialist-Revolutionaries, anarchists, nationalists, White émigrés, prisoners of war, members of counterrevolutionary organizations, deserters, former bourgeois, former party activists, former military men, former-former-former...[...] Most of them from the Baltic Countries, from Western Ukraine and from Bessarabia: hotel doormen, cemetery guards, tram drivers, firefighters, elevator operators, railway workers, taxi drivers, high school students, because of their uniforms, were declared fascist colonels, generals, or marshals and arrested right in the street, to be sent to Siberia" [13 p. 98]. In his work, Nicolae Dabija describes the reality of the Soviet GULAG mentioning that: "The camp had one thousand beds for more than one thousand detainees, being replenished every week, depending on the number of those who had died, with new occupants, who often slept standing up, waiting for someone to die so that they could have a bed in which to rest their bones after an exhausting day of work" [13 p. 74].

One of our compatriots who had the opportunity to communicate for a period of one year (1945–1946) with Japanese prisoners of war in those regions was Vadim Pirogan, sentenced in 1941 for political reasons by the Soviet totalitarian regime.

Reconstructing in his memoirs the events he went through, he writes: "From Taishet, toward the end of the month, they sent me an assistant—a soldier from the communications and signal regiment. A young 18-year-old – Igor Mihnin, who had completed some military telephone communications courses before being taken into the army. He was sent along the route, to me, so that I could train him and help him adapt to the conditions of the Siberian taiga. He was from Saratov, had grown up on the banks of the Volga, and had never seen forests in his short life. The war, that bloody war, had ended. Japan had capitulated. Now, every day, prisoners of war taken in Manchuria and other places began to arrive in Soviet camps... They arrived by freight trains from the cities of Chita, Khabarovsk, and other cities where concentration camps existed. The Taishet camp was now also receiving Japanese prisoners, distributing them through the deserted colonies along the route. The colony at kilometer 81 was crammed with Japanese, about 1500...

The guard was military, from the army that had fought on the Japanese front. In my little house, which was located outside the zone, three officers settled. Three Soviet officers from the regular army, returned from the front. They were responsible for administering this colony of Japanese prisoners. They occupied the large room without a stove.

Vasile, a man of about 25 years old, a senior lieutenant, was responsible for the accounting sector; he also received the food for the Japanese, which was brought by vehicles from Taishet. The prisoners had arrived with their unit, just as they had been on the battlefield, with their commander and all their officers. The agreement concluded between Japan and the Soviet Union provided that the prisoners would work here, thus paying through labor for the losses caused to the Soviet country. The term – three years" [14 p. 204].

In his memoirs, Vadim Pirogan testifies that the Japanese were very disciplined, but they were not prepared to face the harsh frosts of Siberia. At the same time, he relates that the camp administration initially pretended to respect the norms of international law and allowed high-ranking officers to keep their swords. In this regard, he writes: "Some of the officers kept their swords, they had them with them. Dressed in their military uniforms, wearing summer boots, they could not withstand the Siberian frosts. Few were wearing boots or felt footwear. They did not work anywhere; they stayed in the barracks, waiting for things to become clear...

Military discipline was introduced in the colony. The soldiers obeyed the officers blindly. Food products were brought from Japan. Their food was much better than ours. They brought rice, beans, millet, canned fish. They received 400 grams of bread per day, but at first, they did not even eat that... Translators were missing; no one understood what they were saying, what they wanted... In the entire Taishet camp, about 50000 Japanese had arrived. But there was only one translator, only one man who knew the Japanese language. He was taken from one colony to another...

Lieutenant Vada, the interpreter, tried to help the colony administration understand the prisoners and their commanders. The prisoners woke up in the morning, at 6 o'clock, went outside the barracks, and on their knees, said their prayers, bowed, facing the sun, in black underwear, standing motionless..." [14 p. 204-205].

From the information, we find that the prisoners' daily schedule began with waking up at 6 o'clock, during which they were allowed to observe their religious ceremony. They were supplied with food products by the Japanese Government. As in other camps, activities ended at 22:00, except for those involved in extended work schedules. The prisoners were permanently monitored by representatives of the secret services carrying out activities in the camps. The purpose was to identify persons who had committed crimes against the population of the USSR, spies, persons planning to escape, saboteurs, and the famous suicidal soldiers kamikaze, who threw themselves toward certain death in order to fulfill their combat mission.

The guards feared the *kamikaze*, and precisely out of fear they repeatedly opened fire on some prisoners of war, whom they killed by improperly using their weapons. The cases were reported as if the Japanese had attempted to attack the guards' lives, something that had nothing in common with reality, yet the Soviet soldiers, instead of punishment, were commended for "bravery".

The officers of the secret services tried various methods to recruit agents from among the Japanese soldiers who might have feared death. They rarely succeeded because: "The Japanese have always been a people extremely conscious of the existence of death within the reality of their daily lives. However, the Japanese concept of death is simple and clear, totally different from the frightening and hideous way in which Westerners conceive death" [6 p. 99-100].

Recalling the sequence of events, Vadim Pirogan remembers how high-ranking Japanese officers fearlessly refused to fulfill the demands of the camp administration: "Great was the surprise and fury of the translator Vada, but especially of the Soviet administra-

tion, when they heard how the Japanese commander ordered those under his command not to work, to go on strike, to sabotage, to break tools, not to obey... Of course, after the speech, the Japanese commander was imprisoned, his sword was taken away, and someone else was appointed in his place... Among the Japanese prisoners there were also 'soldiers of death'. During the war, they openly went toward certain death, sacrificed their lives by order, sometimes performed 'harakiri', cutting open their bellies and thus dying for their homeland and for the sun-emperor. The NKVD sought to discover and isolate them, taking them to camps with a harsh regime. The Japanese had no desire to work and constantly sabotaged, especially in winter, during the frosts. They gathered around fires and it was no longer possible to move them from there to cut forests. As soon as the Japanese arrived here, all Soviet detainees were taken to other camps and colonies" [14 p. 205].

It should be mentioned that many prisoners died during forest clearing work in Siberian conditions. The work tools were primitive, yet the Soviet authorities did not spare them: "A secret directive of the Ministry of Internal Affairs and the MGB of the USSR no. 77/29 of April 2, 1946 provided the ways of using them for labor in production enterprises, emphasizing that they could be assigned to work in underground galleries, forestry operations, metallurgical enterprises, etc. Soviet leaders and local party activists tried to exploit the labor of prisoners to the maximum for the construction of housing and the building of new enterprises" [20].

Studying the destinies of Japanese prisoners of war in Soviet camps, the writer Haruki Murakami emphasizes in one of his works: "The norm gradually increased, for one reason or another, ... the number of accidents increased because of improper working conditions..." [12 p. 631].

Adding the following: "many people died daily and there were plenty of causes: malnutrition, overwork, collapses, floods, unsanitary conditions because of which all kinds of epidemics broke out, terrible frosts, the violence of the guards, the brutal repression of any resistance, however small. There were also cases of lynching of Japanese by their fellow countrymen" [12 p. 612].

Japanese prisoners who were part of the labor battalions of the People's Commissariat for Defense of the USSR also faced problems. The detention conditions were degrading: "...baths were lacking, the living spaces were in poor condition, there were no infirmaries, the duration of the working day was not respected... On January 1, 1946, on the construction sites and in the work sectors of the People's Commissariat for Defense there were...54 special labor battalions, in which 67809 Japanese prisoners of war were detained" [3 p. 570].

Eyewitness Vadim Pirogan also writes about the situation of Japanese prisoners in his memoirs: "The Japanese could not withstand the frosts and the diseases in the camps. They died like flies. In addition to everything else, their food was stolen... Now the prisoners were no longer the same as at the beginning, when they had arrived clean, well-cared for, neat... They had visibly deteriorated. They walked like 'ours,' hungry, dirty, unshaven, with torn clothes, dressed in old padded jackets, because their impressive uniforms had been sold, exchanged for tobacco, for food. They wrapped their heads and bodies with sheets, blankets, old scarves, burned through by the fire around which they huddled so as not to freeze..." [14 p. 206].

The Soviet authorities used Japanese labor for the construction and repair of railways, realizing that they worked well and would not endanger railway transport or people's lives. During this time, Japanese trucks transporting food products for the prisoners were attacked by local people who stole whatever they could from the trailers.

Some guards and Soviet officers also fed themselves with Japanese products, a fact mentioned by Vadim Pirogan: "By a decision of the Soviet leadership, the construction of the Taishet-Sovgavani railway, begun back in 1937, was resumed. For this purpose, the Japanese, the prisoners of war, were now being used. I continued to live in my little house together with three officers. I got up in the morning, cooked for them, and they were happy. I had plenty of food products. When the trucks with food arrived, I was allowed to climb into the truck and choose what I wanted and what was needed for the officers' food. The trucks were Japanese 'Isuza', 'Izuchi', and other brands. Next to the Japanese driver sat the Soviet sentry, because sometimes villagers stormed the trucks and stole the products transported here along the route... They lay in wait in places where the vehicles had to pass hilly roads. When they stopped near the gate of our colony, the accountant ordered me to take what I needed... At first the Japanese smoked only fine cigarettes, brought with them... When their tobacco ran out, they switched to Soviet makhorka, but even that was scarce... Then they began to sell their clothes, even exchanging food for tobacco. Our 'free men' and detainees were not ashamed, they traded heavily, acquiring for tobacco everything possible: military clothes, underwear, boots...

All these things ended up at the market, at flea markets in different cities. Many of our detainees walked along the route dressed in Japanese clothes... Seeing them from afar, you were sure you had Japanese before you, but when they came closer, you saw that the 'Japanese' was Russian, Ukrainian, or from other Soviet peoples... Black market dealers bustled everywhere—with or without permits" [14 p. 205-206].

Cases were documented when Soviet officers ordered tailors from among the convicts to sew them civilian suits from the fabric of Japanese uniforms: "This state of affairs could no longer continue, especially since now many commissions and various delegations were arriving, whose task was to study the living conditions of the prisoners.

It was checked how the prisoners were fed and clothed, because, as I said, all food products and clothes were provided by the Japanese government. The leadership of the Taishet camp urgently issued an order: within 24 hours, all items and Japanese clothes had to be returned to the warehouse, and whoever did not comply with the order would be tried.

At the wooden bed of each Japanese prisoner, a small plaque was now attached – here the daily food consumption norm was indicated" [18].

Because of deprivation and the harsh detention conditions, as well as the pressure exerted by propagandists during ideological training hours, some Japanese prisoners agreed to collaborate with the Soviet secret services. If they were exposed by their comrades, they were punished severely. The Romanian author Florin Constantin Pavlovici, a victim of political repression, writes the following lines in his memoirs: "Aurelian Gulan told us that in a prisoner-of-war camp in the Soviet Union there was a large group of Japanese soldiers. One of them informed the Soviet political officer about what his comrades thought and said. One morning, at the camp guardhouse, a Japanese prisoner appeared with a beautifully wrapped package, asked the duty officer to hand it to the commander, saluted, and returned to the barracks from which he had come. When the Russians opened the package, they found the informer's head inside it. Since white people have the impression that all yellow people look alike and since the only Japanese who could have identified the messenger had his head separated from his body, the authors of the execution remained unknown" [15 p. 265].

The Japanese writer Haruki Murakami also mentions such cases in his works: "... three more Japanese prisoners were found who had hanged themselves overnight. They

were hanging from the beams so that it would appear they had committed suicide, but it was obvious from a mile away that it had been a lynching carried out by their fellow countrymen. Most likely, the three had been informers...” [12 p. 621].

It is important to note that in the memoirs of Vadim Pirogan there is no information about Japanese prisoners who would have agreed to become informers for the Soviet secret services.

On May 25, 1946, our compatriot was released without having all of his belongings returned: “My mother’s ring, which was taken from me when I was arrested, was never returned. ‘It was lost’, that is what I was told. As a rule, the NKVD did not return gold objects... On June 25, the day of my arrest, at two o’clock in the afternoon, after five years of humiliation, suffering, and degradation, dressed in a green cotton suit, with a wooden suitcase in one hand, I headed toward the gate” [14 p. 218].

Analyzing the situation, we cannot exclude the fact that the suit worn by Vadim Pirogan had been sewn from a Japanese military uniform, because he also had with him other things exchanged for tobacco with Japanese prisoners, a fact confirmed in his memoirs: “A few days later I arrived in Kuibyshev, a large industrial center. I also went out onto the platform to get something to eat. My food had run out and I had been traveling hungry for an entire day. I had some Japanese clothes, but the train kept going and going and I was afraid to go far away in order to reach some flea market.

In Kuibyshev I stayed the whole day and right there, near the station, there was a flea market where you could find anything you wanted. But I had no money. A black rye bread cost 300 rubles. A mess tin of hot boiled potatoes was sold for 200 rubles.

I sold the clothes and bought a loaf of bread and potatoes, which the housewife poured into my fur hat, because I had neither a plate nor a mess tin. I ate with a wolfish appetite half of the bread and all the potatoes...” [14 p. 258].

In the following year, Japanese prisoners began to speak about the fact that soon they would be allowed to return home. From the information published by the Romanian authors Laurențiu Constantiniu, Ilie Șchipor, and Vitalie Văratic, we learn that in one of the informative notes signed on May 7, 1948, it is reported that: “during the period January 1 – May 1, 1948, 25,912 persons (Japanese prisoners of war) were repatriated, according to Order no. 00374/1948 of the MVD of the USSR” [3 p. 682-683].

During their stay in Soviet camps, Japanese prisoners of war occasionally received from the Japanese government postcards with views from their homeland, which reminded them of their native places. Unfortunately, not all of these reached their destination because of the negligence of the employees of the secretariats of the “сил” ministries; at other times they were stolen by employees of the Soviet repressive organs.

In this regard, a top-secret letter was sent by the leadership of the Main Directorate for Prisoners of War and Interned Civilians within the Ministry of Internal Affairs of the USSR to the leadership of the Ministry of Internal Affairs of the MSSR, requesting verification of whether, by mistake, a set of materials addressed to Japanese prisoners of war had reached Camp no. 198 located on the territory of the MSSR.

The following reply was provided to the inquiry: “To the Head of the Main Directorate for Camp Operations concerning Prisoners of War and Interned Civilians, within the Ministry of Internal Affairs of the USSR, Lieutenant General Comrade Kobulov. Moscow. Regarding No.52/2626 of 30.III.48. We inform you that in MIA Camp No.198, the 95,000 postcard forms with views for Japanese prisoners of war to which you referred were not identified. Such postcards for Japanese prisoners are not registered anywhere. At the same time, we note that there are no Japanese among the prisoners of war in the

camp. Deputy Minister of Internal Affairs of the MSSR, Major General Orlov. April 7, 1948 No.0/292" [16].

Thus, we learn that there were no Japanese military personnel in the prisoner camps of the MSSR; however, in some camps located on the territory of the USSR, among the prisoners of war there were both Japanese and our compatriots.

In the following years, the process of repatriation of Japanese prisoners of war intensified. In one of the documents published by the Romanian authors, signed by the Soviet authorities on January 18, 1950, it is mentioned that the following had been repatriated from Soviet prisoner-of-war camps: "574,718 persons from the former Japanese army" [3 p. 762].

We recall that before repatriation a large number of Japanese prisoners were forced to participate in political education lessons: "Carrying out the instructions of the Central Committee of the CPSU, the MVD organs carried out sustained activity for the political education of prisoners of war and for preparing from among them the antifascist activists. In the courses and antifascist schools that were organized, there studied... 21,137 Japanese" [3 p. 776].

Representatives of other nationalities held in Soviet camps were also obliged to participate in such lessons. One example is the camps located in Kazakhstan, about which the Romanian author Vasile Soare wrote, stating that: "In Karaganda three concentration camps were established for foreign military and civilian prisoners: Spassk No.99, Balhash No.37, and Jezkazgan No.39. Balhash and Jezkazgan were established in 1945 and functioned until the spring of 1948, when they were liquidated following the repatriation of prisoners. In the archives no data were preserved regarding the presence of prisoners of Romanian nationality, the majority being Japanese and Germans.

Spassk No.99, established in July 1941 on the structure of the Spassk division (section) of the NKVD Karlag, located 45 km from the city of Karaganda, on the territory of the former copper extraction plant 'Spassk', was the largest camp in the area.

During its entire operation, 66,160 prisoners (66,746 according to other data) passed through it, of whom: 29,777 Germans, 22,225 Japanese, 1,633 Austrians, 1,208 Poles, 1,088 Italians, 1,139 Hungarians, 195 Finns, etc.

To the figures mentioned above are added the 6,740 prisoners of Romanian nationality and more than 1,000 of other nationalities who fought in the Romanian army (Jews, Ukrainians, Armenians, 'Moldovans')" [17 p. 46-48].

Ultimately: "During the carrying out of political activities and especially during the repatriation period, from German, Japanese, Hungarian, Romanian, and Austrian prisoners of war there were received over 4,000 letters of thanks and positive appreciation addressed to the Soviet Union and to life in the camps, signed by 834,562 prisoners of war. In these letters, the prisoners of war expressed their friendship toward the Soviet Union and thanks to Comrade Stalin and to the Soviet people for the humane treatment toward them" [3 p. 778].

It is known that many prisoners were forced to sign such letters, the content of which was written by Soviet propagandists. The process of repatriation of Japanese prisoners of war to their country of origin lasted until 1950: "...through a TASS communiqué of April 22, 1950, the completion of the repatriation of Japanese prisoners of war was announced.

After the completion of repatriation, only military personnel from among the prisoners of war convicted of crimes, those under investigation, as well as others withheld from repatriation for other reasons, remained in the USSR" [3 p. 778-779].

On January 1, 1953, from this category there were detained in camps and other institutions of the USSR: "1,476 Japanese, of whom 1,456 convicted and 20 without conviction. Interned civilians numbered 411, of whom 406 were convicted and 5 without conviction. Prisoners of war numbered 1,065, of whom 1,050 were convicted and 15 without conviction. Among the convicted prisoners there were 29 generals, 385 officers, 636 soldiers and non-commissioned officers" [3 p. 810].

In one of the judicial trials against war criminals, the Japanese general Yamada Otozo was targeted, accused of attempting to provoke a bacteriological war against the USSR. Studying the biography of this general of the Imperial Japanese Army, we learn that he was a veteran of several wars: the Russo-Japanese War of 1904-1905; the Sino-Japanese War of 1938; and the Second World War: "Born on November 6 in Nagano Prefecture. He pursued military studies in Tokyo. In November 1902, he graduated from the Military Academy of the Imperial Army, receiving the rank of second lieutenant. In June 1903, being assigned to service in the 3rd Cavalry Regiment, he was promoted to the rank of lieutenant. In February 1905, he was granted the rank of senior lieutenant and appointed instructor at the military college of the land army. In 1912 he was promoted to the rank of captain. In November 1912 he graduated from the elite Higher Academy of the Imperial Army, from which many famous Japanese military men graduated" [18].

He subsequently achieved a successful career, reaching the rank of General of the Army in 1940. From July 18, 1944, he was appointed commander of the army in Manchuria, being the last commander of the Kwantung Army: "He was preparing for the inevitable confrontation with the troops of the USSR, understanding that under the conditions of an army weakened after battles he would not be able to count on help. Thus, Yamada tried, within the limits of possibility, to strengthen the positions with the forces available to him, forming 8 new infantry divisions and 7 infantry brigades from poorly trained volunteers.

During the campaign that began on August 9, 1945, in the Manchurian operations, the Soviet troops bypassed the well-fortified Japanese sectors and destroyed the Japanese military units that were isolated and left without the support of tanks and artillery, causing them enormous losses within a few days and considerably affecting the Japanese defense.

After several unsuccessful counteroffensive attempts, on August 20, 1945, the commander was forced to capitulate with the Kwantung Army. Among the 600,000 prisoners was also Otozo Yamada, who was escorted to the city of Khabarovsk. On December 25–30, 1949, the military tribunal of the district, in closed session, examined the case of the Japanese prisoners, including Yamada. The former commander of the Kwantung Army was accused of attempting to unleash a bacteriological war against the USSR.

He was sentenced to 25 years of detention in a corrective labor camp. On March 12, 1950, Yamada Otozo was escorted to Camp No.48 in Cherntsy. In July 1950, at the request of the government of the People's Republic of China, Yamada and other former Japanese military men were transferred to China to be tried for crimes committed on the territory of that country.

Yamada acknowledged guilt for the crimes committed by his subordinates and served five years of imprisonment in the city of Fushun. On February 22, 1956, at the age of 75, by Resolution of the Presidium of the Central Committee of the CPSU 'On the Early Release of the Japanese General Yamada', Yamada Otozo was pardoned and repatriated to Japan. He died in 1965 at the age of 83" [27].

Romanian authors also wrote about the judicial trial against General Yamada Otozo and other Japanese military personnel, stating that: "In connection with the trial of the

main war criminals in Tokyo, the former adviser to the German military attaché in Tokyo, Lieutenant Colonel von Petersdorf, was interrogated, and he testified at the trial as a witness for the Soviet prosecution. Also prepared were the testimonies of Major General Matsumura, Colonel Semidzima, and the former emperor of Manchukuo, Pu Yi—as witnesses for exposing the criminal Japanese military clique, who testified at the International Tokyo Trial [...].

The investigation was carried out, and at the end of December 1949 the Public Trial of Khabarovsk was organized against the former commander of the Japanese Guandong Army, General Yamada, the former commanders of the sanitary and veterinary directorates of the above-mentioned army, Kajizuka and Kawashima, and against a group of workers of the so-called 'Anti-Epidemic Detachment No.731', which was preparing bacteriological warfare against the Soviet Union.

In this case, 12 defendants were sentenced to various prison terms" [3. p. 780].

It should be mentioned that even General of the Army Yamada Otozo was forced to write a letter of thanks to the Soviet authorities for the good conditions he had benefited from during his detention in Soviet camps.

Soviet propaganda transformed the reading of thank-you letters by prisoners of war on the day of their repatriation to their country of origin into a ceremony. They were gathered on the railway station platform, where, at the command of the camp administration, several of them, stepping out of formation one by one, expressed gratitude to the Soviet authorities for the "humanism" shown toward them during detention.

These actions were organized at the instruction of the leadership of the Ministry of Internal Affairs of the USSR. Thus: "On June 16, 1949, all camp chiefs were informed of the order signed by the Deputy Minister of Internal Affairs of the USSR, Colonel General I. Serov, which provided the following: 'to obtain from all prisoners repatriated to their country of origin letters of thanks addressed to the Soviet government. To organize assemblies and rallies during which prisoners should make entries with positive content in opinion books, etc. These actions are necessary to combat slanderous messages launched against the USSR from abroad'" [5. p. 512].

In reality, the thank-you letters could not cover up the information regarding the multiple deaths recorded among the prisoners because of the disastrous conditions in the Soviet camps. There were considerable losses among the prisoners of war as well.

As the Romanian author Florentina Dolghin mentions: "In 1945 about 600,000 Japanese ended up in captivity. Of them, 53,000 died, according to Japanese data" [19 p. 40].

Thus, the prisoners were repatriated, but the work concerning the exposure of spies of foreign secret services gained momentum in the USSR. The political leadership demanded that the fight against foreign agents be intensified also in the union republics. Repeated reference was made to letters previously sent to the Ministry of Internal Affairs of the MSSR, among them the top-secret letter No.52/3477 signed on April 19, 1948, by the Deputy Head of the Main Directorate for Prisoners of War and Interned Civilians within the Ministry of Internal Affairs of the USSR, Lieutenant General A. Kobulov, which had the following content: "In January 1948, in Moscow, the leadership of the employees of the Ministry of Internal Affairs and of the Directorate for the Administration of Camps for Prisoners of War was gathered in connection with issues referring to operational work with agents from among the prisoners [...] Taking into account that the German secret services created a network of agents from among traitors—Soviet citizens who had lived in the temporarily occupied territory—a priority task of our services consists in exposing them and liquidating German agents on the territory of the Soviet Union.

This is necessary because there is a risk of establishing connections between the German secret services and the Anglo-American ones. All the above mentioned regarding the German secret services applies equally to the struggle against the American and Japanese secret services acting against the Soviet Union" [20].

Under the cover of fighting spies of foreign secret services, a campaign of demonization of representatives of certain capitalist countries began. Among them were also the Japanese.

Paradoxically, activities of denigrating the Japanese were also carried out by Soviet propaganda on the territory of the MSSR. As a reason served the photographs placed in places of honor in the homes of some Bessarabians, which immortalized scenes from the Russo-Japanese War of 1904-1905, in which many of our compatriots had participated.

Thus, the Soviet repressive organs identified that the Japanese enjoyed the sympathy of many locals. We recall that: "Bessarabians under Russian military occupation were forced to participate in the Russo-Japanese War of 1904–1905" [21, p. 10].

As author Florentina Dolghin states: "the period of the Russo-Japanese War of 1904–1905 remained in history through a remarkable chivalrous, humane attitude of the victors toward the defeated and captured prisoners. It was 'the last clash between gentlemen in history'" [28].

In this context: "in Bessarabian, Russian, and Japanese folklore, recruitment songs and poems appeared in which the Port Arthur fortress is mentioned, for which fierce battles were fought" [21, p. 15].

In order to impose a new interpretation of these events, Soviet propaganda requested that lectures be delivered in state institutions regarding the victory of the Soviet Army at Port Arthur in the summer of 1945, in order to cover up the shameful capitulation of Russian troops in December 1904 before the Japanese armies.

In the archival materials, the minutes of the meeting of the officers of the Militia School in the city of Chișinău, held on March 31, 1948, at the central headquarters of the Ministry of Internal Affairs of the MSSR, are preserved. During this meeting, the deputy head of the school for education, Deomin, justified the delay in making the work Port Arthur available to the students, declaring the following: "Regarding educational work, I confirm that we correctly understood the tasks of the Central Committee of the Communist and Bolshevik Party concerning the raising of the level of ideological education in groups outside study hours. Probably the lecturers were not fully involved in this activity and thus we failed to achieve the expected results. At present, however, the reading of the book 'Port Arthur' and other books is taking place, books which enrich the volume of knowledge of the collective, and the students take an active part in discussions on these books" [22].

Later, in this educational institution as well as in others across the USSR that trained specialists for the Soviet repressive organs, substantial batches of books written by Soviet authors arrived, in which capitalist countries with developed economies, including Japan, were discredited.

In the manual published by the Soviet author N.F. Kuznetsova, it is stated that: "Japan is a country in which crime increased catastrophically after it was occupied by the USA. In 1963, 1,557,809 crimes were recorded there. For every 100 thousand people of the population, 3,899 persons were convicted" [23, p. 219].

A different opinion in this regard is offered by author Ronald Dore, who states that after the Second World War, Japan faced major social and economic problems. Gradually, however, the situation began to improve.

Analyzing the factors that contributed to Japan's economic leap after the war, he mentions that: "Such a sudden improvement took place precisely during the period when Japan was occupied by American troops" [24, p. 149].

It is necessary to mention that some Soviet authors achieved remarkable careers due to their criticism of Japan and the Japanese. One example is author N.F. Kuznetsova, who published a series of such materials in her works, specifying that: "In Japanese prisons in 1963 there were 47% more people than in 1940... In Japan, crimes against property constitute 2/3 of the total number of crimes recorded... Japan occupies first place in the world in the number of transport-related offenses. Four times more people died because of these offenses than in the USA. At the same time, Japan occupies first place in smuggling, trafficking, and drug consumption" [23, p. 219-221].

After this follows that: "In Japan there are 5,000 gangster bands bringing together 170 thousand people" [23, p. 225].

Another Soviet author writes that: "Many cities in the USA, in the industrial zones of Europe and Japan, are expanding, forming gigantic urban agglomerations, 'megalopolises'".

Under capitalism, this process of rapid urbanization leads to an increase in population numbers and to the uncontrolled growth of criminality in these large cities" [25, p. 119].

There were also Soviet authors who declared that only capitalist countries were characterized by crimes such as: "terrorism, illicit drug trade, counterfeiting money, crimes against property, concealment of wealth obtained through criminal means, following thefts from museums, art galleries, churches, as well as from the illicit arms trade. Around 60% (in Japan) and 90% (in England, USA) of the crimes committed are those against property" [26, p. 59].

Teaching staff in the educational institutions of the force ministries constantly instructed students in the field of fighting foreign spies. The same thing happened in the Militia School in the city of Chișinău. During the lessons, the possible ways of spies infiltrating the territory of the USSR were reviewed.

Japan was permanently included in the list of countries generating danger. In this regard, the Soviet authors V. Kurleandskii and M. Karpushin warned that: "In judicial practice there are cases when Japanese ships entered the territorial waters of the USSR because of bad weather. The crews of these ships declared that they had strayed from their route because of the storm. All crew members were obligatorily subjected to checks, and only if it was proven that they did not intend to cross the border illegally were they not criminally punished" [27, p. 162].

Analyzing these works, we find that the authors took some information from the Soviet press published by propagandists, without verifying its accuracy.

Thus, referring to the newspaper "Известия, 31 мая 1963 г.", N.F. Kuznetsova writes: "In capitalist countries, the crime of child kidnapping is widespread. The USA occupies first place in such crimes.

Japan, before being militarily occupied by the USA, did not know that such crimes existed and could not even translate their names into Japanese. However, in the last 10 years in Japan, 300-500 children are kidnapped annually. Five thousand children kidnapped over 17 years of the Americanization of the country—this is the bitter statistic of this type of crime in Japan" [23, p. 222].

In another case, taking information from the newspaper "Правда, 2 июля 1967 г.", N.F. Kuznetsova states that in Japan many people died because of poisoning from

poor-quality food products: "Around 90% of food products in Japan are sold without any information regarding origin. Very often the quality of the marketed milk leaves much to be desired. Water with synthetic fat is mixed into it" [23, p. 229].

In contrast to the statements of N.F. Kuznetsova come the assertions of the Romanian authors Constantin Bușe and Zorin Zamfir, who found that: "In the 1960s, the growth of the Japanese economy reached rhythms never before seen in any capitalist country. By the end of the 1960-1970 decade, Japan ranked first in the world in shipbuilding, the production of transistor radios, as well as in the production of automobiles, plastics, and synthetic fibers, and produced more steel than West Germany, England, and France taken together. Japan's influence and prestige in the world, due to its economic power, ultra-modern technologies, diligence and tenacity, the talent and discipline of the Japanese people, became incomparably greater than what its political and military leaders had wanted or achieved during the period between 1868 and 1945" [28, p. 369-370].

At the same time, the situation in the USSR deteriorated. Against this background, at the beginning of the 1990s, some Soviet authors began publishing books to offer useful advice to citizens on how to protect themselves from criminals in the country, specifying that the number had grown sharply of: "groups of professional criminals specialized in apartment thefts, vehicle theft, crimes committed in the street (violence, beatings, vandalism, etc.). A considerable part of the population became victims of criminality. People were afraid to leave their homes in the evening and could not lead a normal way of life. Many leave their native place and come to share the fate of refugees. In the country, more than 2 million crimes are committed annually. A number of criminologist scholars consider that the real figure is much higher, around 10 million. Unfortunately, estimates show that every citizen once or twice during life may become a victim of criminality" [29, p. 4-5].

The same situation can be observed today in the Russian Federation, where many authors continue to criticize Japan and the Japanese in their books. The authors L. Vedenskaia and L. Pavlova offer the following recommendations to lawyers: "In Japan, during a discussion, it is not customary to look each other in the eyes, whereas for us, in order to establish normal contact with a person, according to psychologists, one must look at the interlocutor 60–70% of the time during the discussion.

Shy people, who look aside or downward during conversation, do not inspire trust" [30, p. 40].

At the same time, in the opinion of other Russian authors, the psychology of contemporary Japanese is a reflection of the education received over many centuries in accordance with the provisions of the samurai code.

They are accustomed to honoring their given word so as not to lose their dignity. They are always ready to risk their lives to defend their country, their own honor, as well as the honor of the family to which they belong.

Reconstructing historical events, the Russian author E. Iakovlev states that: "In the 1890s... the samurai became the core of the reformed Japanese army and navy, occupying positions as officers and generals. More than 20,000 former samurai joined the police. Two-thirds of the central apparatus were occupied by former samurai and members of their families. Around 40% of teachers were former samurai. They occupied these positions ennobling them with the values on which they had been educated. They were distinguished by honor, dignity, incorruptibility, spirit of sacrifice, etc." [31 p. 240].

Qualities that were certainly lacking in Soviet leaders, accustomed to presenting crimes against the people as acts of heroism. Much more sincere were some war veterans who eventually admitted that some heroic deeds in their biographies were in reality

crimes.

At an event dedicated to war veterans that took place in 2012, retired Colonel Piotr Rudeaghin participated, born on July 7, 1925, in the village of Sergeevka, Krasnodar region, into a worker's family. After graduating from school, he was mobilized into the Red Army.

For a period, he was a fighter in a partisan detachment, after which he became a platoon sergeant of the rifle company of the Ukrainian Front. Later, he graduated from the military medical school and in 1945 was appointed medical instructor in the Motorized Brigade in Transbaikalia... in 1952 he graduated from the Faculty of Law of the University of Odesa... in 1966 he was appointed lecturer at the Militia School of the Ministry of Internal Affairs of the USSR in the city of Chișinău, where he worked for more than 20 years.

During military-patriotic education classes, he told students how, while escorting a train of Japanese prisoners of war, he had been attacked by a *kamikaze* who threw himself at him trying to neutralize him by applying martial arts techniques.

According to P. Rudeaghin, the Japanese prisoner caught him by surprise, but he managed to use his firearm, mortally wounding him. The superior of the train reported the incident to the leadership, mentioning the spirit of bravery shown by the young Soviet soldier Piotr Rudeaghin.

Generations of militia officers heard this legend, and only in 2012 did Piotr Rudeaghin admit that in fact, during service, he had accidentally pulled the trigger and killed a Japanese prisoner of war who was sleeping in the upper bunk of the railway car during transport.

He was saved from trouble by the head of the train, who presented the situation as an attempt on the life of the Soviet soldier by a Japanese prisoner of war. Unfortunately, this is not the only case when a crime committed by a Soviet soldier against a prisoner of war was presented as an act of heroism.

A great number of such falsifications were included in history textbooks published during the Soviet totalitarian regime. Paradoxically, the representatives of the communist totalitarian regime, who conducted political training courses and educated hundreds of thousands of prisoners of war in Soviet camps to become pacifists, over the years launched a series of wars of aggression against sovereign states.

The same criminal policy was also adopted by the autocratic regime in the Russian Federation, which at the present stage, violating the norms of international law, maintains under military occupation territories belonging to other countries.

In 2014, Russian military troops invaded Ukraine, killing with particular cruelty both soldiers and civilians. The war continues to this day. The international community is shocked by the barbarism displayed by soldiers of the Russian army, by the way the norms of international humanitarian law are violated, by acts of torture applied against the civilian population, as well as by video footage of the demonstrative beheading of Ukrainian prisoners captured by Russian troops.

The detention conditions of Ukrainians held in the custody of the authorities of the Russian Federation are degrading. It is evident that the criminal manifestations of the Kremlin leadership generate imminent risks for humanity. During military actions, cases of the use of chemical weapons and other weapons prohibited by international legal acts by Russian troops against Ukrainian soldiers have been reported.

In such a situation, we inevitably remember the judicial trial against the Japanese General Yamada Otozo and the workers of the so-called "Anti-Epidemic Detachment No. 731", as well as the biological and other types of evidence from the criminal case, which remained both in the USSR and in China. In this regard, we cannot exclude the possibility

that these were not destroyed but were used in experiments to create much more dangerous chemical and bacteriological weapons.

In this context, it is necessary to analyze for what purpose Russian propaganda spreads rumors such as: "The coronavirus has become an element of the trade war between the USA and China, a method of reducing the population on the planet, launched by the secret services..." [32, p. 90].

In reality, it is known that China cooperates very closely in many areas with the Russian Federation. Unfortunately, recently more information has appeared regarding the support provided to the Russian Federation by China in the war of aggression against Ukraine.

It should be noted that the autocratic regime in the Russian Federation and some of its allies present a danger to global security. They allow themselves to openly threaten certain states that they may be attacked at any moment by Russian troops. Among the targets, as usual, Japan is also included.

Former Minister of Defense of the Russian Federation Sergei Shoigu spoke about this at a meeting with North Korean leader Kim Jong-un, who visited Russia. Knowing about the recent provocations carried out by North Korea toward Japan, S. Shoigu, while presenting strategic bombers, remarked sarcastically: "They can fly from Moscow to Japan and back" [33].

The behavior of the rulers of the Russian Federation at the present stage does not differ from that of fascist leaders during the Second World War. At their command, Russian ballistic missiles daily make victims among the civilian population of Ukraine.

Both adults and children are being killed. These criminal actions can be stopped only with the involvement of all countries that advocate respect for international law and democratic values.

It is the only solution to demonstrate to dictatorial regimes that the Nuremberg and Tokyo trials were conducted in order to send a clear signal to the international community that no country has the right to threaten the independence and sovereignty of another country, to use force to militarily occupy territories that do not belong to it, and to commit crimes against the population of a foreign country.

At the same time, efforts must be strengthened to free Ukrainian civilians and military personnel held captive on the territory of the Russian Federation under inhuman and degrading conditions similar to those in the Soviet camps where hundreds of thousands of prisoners of war of different nationalities lost their lives, including around 50,000 Japanese.

Conclusion. The study of the legal regime and detention conditions of prisoners of war in the Soviet Union reveals a striking discrepancy between the imperatives of international humanitarian law and the realities of the Stalinist concentration camp system. Although the international normative framework, defined by the Hague and Geneva Conventions (1929), provided theoretical guarantees for the protection of captured combatants, the authorities in Moscow subordinated these obligations to ideological and political interests, leaving room for arbitrariness and systematic abuses.

The daily realities in Soviet camps, marked by forced labor under conditions of extreme exhaustion, chronic malnutrition, and severe deficiencies in medical assistance, transformed the experience of captivity into a mechanism of inhuman and degrading treatment. In this context, the Japanese contingent captured in the Far East represented a particularly vulnerable category, the high mortality rate being the direct consequence of an administration that ignored human dignity in favor of economic exploitation.

A defining aspect of this period was the use of propaganda as an instrument for legitimizing violence. Through public show trials, orchestrated letters of gratitude, and ideological re-education programs, the regime attempted to conceal the repressive nature of the system, constructing a façade of compliance with international norms. The analysis of the Japanese case demonstrates that these practices were not isolated incidents, but constitutive elements of a totalitarian system aimed both at exploiting labor and at the psychological disintegration of the enemy.

Ultimately, the treatment applied to Japanese prisoners of war and those of other nationalities remains indisputable evidence of the repressive nature of the Soviet regime. The lessons drawn from this case study reaffirm the imperative of strengthening international mechanisms for monitoring and protecting human rights. In a world marked by new instabilities, the strict observance of humanitarian norms remains the only guarantee for preventing the repetition of historical tragedies and for protecting human integrity in the face of any totalitarian ideology.

Proposal de lege ferenda. In order to prevent violations of the rights of prisoners of war, it is necessary to strengthen the international legal framework by establishing mandatory mechanisms for monitoring detention facilities under the direct control of neutral international organizations. This reform could include extending the powers of international tribunals so that they would not act only punitively, but would also actively monitor compliance with legal norms and the conduct of armed conflicts in real time.

It is also imperative to establish a stricter sanctions regime for states and individuals responsible for inhuman treatment, together with the introduction of a centralized and mandatory system for recording and reporting the situation of prisoners in order to eliminate the risk of enforced disappearances. At the same time, the legal framework must guarantee the inalienable right to legal assistance and communication with the outside world, combined with rigorous training of military personnel in the field of international humanitarian law. The implementation of these complex measures would contribute to the transition from theoretical protection to effective protection, preventing captivity from becoming an instrument of repression or exploitation.

Bibliographical references

1. Simion Carp, Ruslan Condrat. Prizonieri de război omorâți în lagărele din URSS. În: Anale Științifice ale Academiei „Ștefan cel Mare" a MAI al Republicii Moldova, nr. 17, Chișinău, 2023, p. 51-52.
2. Annex to the Fourth Hague Convention of 1907, and the Geneva Convention relative to the Treatment of Prisoners of War of 27 July 1929.
3. Laurențiu Constantiniu, Ilie Șchipor, Vitalie Văratic, Vladimir Korotaev, Vladimir Kuzelenkov. Traducerea documentelor, Laurențiu Constantiniu, Simion Iurac, Vitalie Văratic. Prizonieri de război români în Uniunea Sovietică: documente 1941-1956. București: Monitorul Oficial R.A., 2013, p. XI-XXI.
4. Р.С. Мулукаев. История государственного управления в России. Москва, 2005, с. 50.
5. В.А. Иванов, Н.В. Колошинская. МВД и немецкие военнопленные в востановительный период (1945-1949 гг.): ленинградский опыт. В: Сальников В.П., Ростов К.Т., Баранов В.М. и др. Министерство внутренних дел: страницы истории (1802-2002). Санкт-Петербург, 2001, с. 497.
6. Yukio Mishima. Calea samuraiului astăzi. Traducere din limba engleză de Luliu Rațiu, Humanitas. București, 2014, p.99-100.
7. Anatol Petrencu. Teroarea stalinistă în Basaraba: studii, documente, memorii. Chișinău,

2013, p. 227.
8. Simion Carp, Elena Carp, Terentie Carp, Ghenadie Cibanu. Istoria satului Baiuș în documente: 1911-2011. Chișinău, 2012, p. 233.
9. Christopher Andrew. Lumea secretă. O istorie a serviciilor de informații. Trad. din engleză și note: Viorela-Valentina Dima(coord.), Denise Dona, Raluca–Elena Hurduzeu, Olivia-Cristina Rusu. București: Ed. Trei, 2022, p. 792.
10. Cum să trăiești în stil japonez/Yutaka Yazawa; trad.de Maria Rizoiu. București: Humanitas, 2019, p. 50-51.
11. Александр Лукашин, Елена Лукашина, Андрей Сорокин. Советская история. Документы.
12. Haruki Murakami. Cronica păsării-arc, Politom, 2004, p.635.
13. Nicolae Dabija. Tema pentru acasă, Chișinău, 2020, p. 74-98.
14. Vadim Ștefan Pirogan. Cu gîndul la tine Badsarabia mea. Editura Enciclopedică ”Gheorghe Asachi” Chișinău, 1995, p. 204.
15. Florin Constantin Pavlovici. Tortura pe înțelesul tuturor. Eikon. București, 2017, p. 265.
16. Archive of the Ministry of Internal Affairs, Fund 103, Inventory 6, Item 45, File No.1, Vol. 1, Sheet 130.
17. Vasile Soare. În Kazahstan, pe urmele prizonierilor români. Magazin istoric Anul XL-serie nouă, nr.5 (470), mai 2006, p. 46-48.
18. [citation 15.04.2026] Available at: https://ru.m.wikipedia.org,Yamada,Otozo.
19. Florentina Dolghin. Narașino, Lagărul cu mese de biliard. În: Revista Magazin istoric nr.9 (AnulXl), septembrie 2006, p. 40.
20. Archive of the Ministry of Internal Affairs, Fund 103, Inventory 6, Item 70, Sheet 230.
21. Simion Carp. Prizonierii de război. Cronica războiului ruso-japonez din 1904-1905. Chișinău, 2023, p. 10-15.
22. Archive of the Ministry of Internal Affairs of the Republic of Moldova, Fund 103, Inventory 6, Item 49, File No.3, Vol. 1, Sheet 267.
23. Кузнецова Н.Ф. Преступление и преступность. Москва: Издательство Московского университета, 1969, с.219-229.
24. Ronald Dore. Întreprinderea Britanică – Întreptinderea Japoneză. Originile diversității la nivel național în sfera relațiilor industriale. Editura Tehnica, Chișinău, 1998, p. 149.
25. Ю.М. Антонян. Социальная среда и формирование личности преступника. Москва, 1975, с.119.
26. Криминология и профилактика преступлений. Под редакцией А.И.Алексеева. Москва-1989, с. 59.
27. В.И. Курляндский, М.П. Карпушин. Ответственность за государственные преступления. Часть вторая. Москва, 1965, с.162.
28. Constantin Bușe, Zorin Zamfir. Japonia. Un secol de istorie (1853-1945). București: Humanitas, 1990, p. 369-370.
29. А.И. Алексеев, Ю.В. Васильев, Г.Г. Смирнов. Как защитить себя от преступника. В Право в нашей жизни 10/1990, Москва, 1990, с.4-5.
30. Л.А. Введенская, Л.Г. Павлова. Риторика для юристов. Учебное пособие для вузов. Ростов-на-Дону „Fenix”, 2007, с. 40.
31. Е.И. Яковлева. Самураи и их место в политической системе и обеспечении безопасности японского государства. В. Политическая система и безопасность государства. Москва, 2009, с. 240.
32. Р.Г. Ардашев. Иррациональность общественного сознания россиян. Москва, 2021. с. 90.
33. Protv.md. News broadcast dated: 16.09.2023.

CZU: 341.3/.4 **DOI: https://doi.org/10.5281/zenodo.20915202**

TORTURE IN ARMED CONFLICTS: INCRIMINATION AND INTERNATIONAL CRIMINAL RESPONSIBILITY

Ion BADRAJAN,
PhD Candidate,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Head of the Operational Coordination Division, Sîngerei Police Inspectorate,
General Police Inspectorate of the Ministry of Internal Affairs,
Republic of Moldova
ORCID ID: 0009-0004-2131-3951

Andrei NASTAS,
PhD, Associate Professor,
Transborder Faculty,
"Dunărea de Jos" University of Galați,
Romania
ORCID ID: 0000-0003-2715-6577

Abstract

This study analyzes the evolution and consolidation of the international legal framework concerning the criminalization of torture in the context of armed conflicts, highlighting its status as a peremptory norm of international law (jus cogens) and its implications for international criminal responsibility. The research begins with the early regulations established by the Hague Conventions of 1907, which set the first legal limits on the conduct of belligerents, and continues with the significant developments introduced by the Geneva Conventions of 1949 and the Additional Protocols of 1977, which explicitly enshrined the absolute prohibition of torture and inhuman treatment.

The article systematically examines the recognition of torture as an international crime in modern legal instruments, particularly in the Rome Statute of the International Criminal Court, where it is classified both as a war crime, when committed in connection with an armed conflict, and as a crime against humanity, when it forms part of a widespread or systematic attack directed against a civilian population. In this regard, the dual legal regime of incrimination is emphasized, as well as the constitutive elements of the offense, including specific intent and the purposes pursued (such as obtaining information, punishment, intimidation, or discrimination).

Furthermore, the study pays particular attention to the mechanisms for engaging international criminal responsibility, analyzing the role of ad hoc international criminal tribunals (such as the International Criminal Tribunal for the former Yugoslavia and the one for Rwanda) in the development of relevant jurisprudence, as well as the contribution of the International Criminal Court to the consolidation of applicable legal standards. Fundamental principles such as individual criminal responsibility, the non-applicability of statutes of limitation to international crimes, and the inadmissibility of invoking superior orders as a justification for torture are also highlighted.

At the contemporary level, the article identifies several major challenges affecting the effective enforcement of international legal norms. These include the jurisdictional limitations of the International Criminal Court, determined by the principle of complementarity and by the refusal of certain states to ratify the Rome Statute, as well as practical difficulties in evidence collection and the execution of arrest warrants. At the same time, the study examines political pressures exerted by powerful states, which may affect the independence and functioning of international criminal justice mechanisms.

In conclusion, the study reveals a significant gap between international legal norms, which establish the absolute prohibition of torture, and the practical reality of their enforcement. Although the normative framework is well-developed and coherent, its effectiveness is limited by political, institutional, and operational fac-

tors, thereby undermining, to a certain extent, the fundamental objective of international criminal law: the prevention and punishment of the most serious violations of fundamental human rights.

Keywords: torture, war crime, armed conflict, human rights, jus cogens, International Criminal Court, international criminal responsibility.

TORTURA ÎN CONFLICTELE ARMATE: INCRIMINARE ȘI RĂSPUNDERE PENALĂ INTERNAȚIONALĂ

Abstract

Prezentul studiu analizează evoluția și consolidarea cadrului juridic internațional privind incriminarea torturii în contextul conflictelor armate, evidențiind caracterul său de normă imperativă de drept internațional (jus cogens) și implicațiile asupra răspunderii penale internaționale. Cercetarea pornește de la reglementările incipiente consacrate în Convențiile de la Haga din 1907, care au stabilit primele limite juridice privind conduita beligeranților, continuând cu dezvoltările semnificative aduse de Convențiile de la Geneva din 1949 și Protocoalele adiționale din 1977, ce au consacrat în mod explicit interdicția absolută a torturii și a tratamentelor inumane.

Articolul examinează în mod sistematic consacrarea torturii ca infracțiune internațională în instrumentele juridice moderne, în special în Statutul de la Roma al Curții Penale Internaționale, unde aceasta este calificată atât ca crimă de război, atunci când este comisă în legătură cu un conflict armat, cât și ca crimă împotriva umanității, în cazul în care face parte dintr-un atac generalizat sau sistematic îndreptat împotriva populației civile. În acest sens, se subliniază dublul regim juridic al incriminării, precum și elementele constitutive ale infracțiunii, inclusiv intenția specifică și scopul urmărit (obținerea de informații, pedepsirea, intimidarea sau discriminarea).

De asemenea, studiul acordă o atenție deosebită mecanismelor de angajare a răspunderii penale internaționale, analizând rolul instanțelor penale internaționale ad-hoc (precum Tribunalul Penal Internațional pentru fosta Iugoslavie și cel pentru Rwanda) în dezvoltarea jurisprudenței relevante, precum și contribuția Curții Penale Internaționale la consolidarea standardelor juridice aplicabile. Sunt evidențiate principiile fundamentale precum responsabilitatea penală individuală, imprescriptibilitatea crimelor internaționale și inadmisibilitatea invocării ordinului superior ca justificare pentru comiterea torturii.

În plan contemporan, articolul identifică o serie de provocări majore care afectează eficiența aplicării normelor juridice internaționale. Printre acestea se numără limitele jurisdicționale ale Curții Penale Internaționale, determinate de principiul complementarității și de refuzul unor state de a ratifica Statutul de la Roma, precum și dificultățile practice în colectarea probelor și executarea mandatelor de arestare. Totodată, sunt analizate influențele politice exercitate de statele puternice, care pot afecta independența și funcționarea mecanismelor de justiție penală internațională.

În concluzie, studiul relevă existența unui decalaj semnificativ între normele juridice internaționale, care consacră interdicția absolută a torturii, și realitatea practică a aplicării acestora. Deși cadrul normativ este bine dezvoltat și coerent, eficiența sa este limitată de factori politici, instituționali și operaționali, ceea ce compromite, într-o anumită măsură, realizarea obiectivului fundamental al dreptului penal internațional: prevenirea și sancționarea celor mai grave încălcări ale drepturilor fundamentale ale omului.

Cuvinte-cheie: tortură, crimă de război, conflict armat, drepturile omului, jus cogens, Curtea Penală Internațională, răspundere penală internațională.

Introduction. The evolution of human civilization has been accompanied since its very origins by the element of violence [1, p.133]. Violence represents one of the most serious violations of human dignity and one of the fundamental constants of human existence, manifesting itself throughout history in varied forms and intensities.

The phenomenon of organized armed violence can be traced back to the era of pre-state formations, which possessed armed groups, continuing with the well-structured armies of great ancient empires, the military forces of feudal lords, and up to the armies of the modern era. Nevertheless, the central and immutable element of any military force, throughout history, has remained and continues to be the human person – the combatant [1, p.133].

What distinguishes human beings from other forms of life is the capacity to evolve and regulate their own behavior, including in situations of conflict. It is upon this capacity that an international legal framework has been progressively built, aimed at limiting violence in relations between states. War, as the extreme form of organized violence, has become the subject of increasingly elaborate international regulations.

International humanitarian law, crystallized through the Geneva Conventions of 1949 and their Additional Protocols, expressly prohibits any form of torture, degrading treatment, or mutilation applied to protected persons in the context of armed conflicts.

The prohibition of torture is enshrined in both universal instruments and in international humanitarian law, being qualified as a grave breach that entails the criminal responsibility of its perpetrators. Furthermore, the effectiveness of protection mechanisms is often limited by practical difficulties, such as the impossibility of collecting evidence, the destruction of judicial infrastructure, or the lack of state cooperation, which necessitates the strengthening of normative and institutional guarantees at the international level, as well as the development of effective mechanisms for holding perpetrators criminally accountable for such acts.

In the context of armed conflicts, torture falls within the category of serious violations of human rights, being prohibited by both international human rights law and international humanitarian law. It affects the essential core of rights inherent to the human being, grounded in human dignity, and frequently manifests itself within armed conflicts through acts of violence against civilians or persons outside of hostilities. Such acts fall within the sphere of the most serious crimes of concern to the international community, being susceptible to qualification as war crimes or crimes against humanity [8, pp.101-110].

As Nigel Rodley and Matt Pollard note, many aspects of the international public order in the modern world were shaped as a reaction to the events of the Second World War. The United Nations, at the center of international cooperation, proclaims in the first article of its Charter, as one of its purposes, the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion. When the United Nations came into existence and began drafting instruments intended to identify the principal norms on human rights, the experience of the atrocities of the Second World War made it inevitable to address the issue of torture. Accordingly, the Universal Declaration of Human Rights of 1948 prohibited torture, giving rise to a prohibition that has since been embedded in various international instruments on the protection of human rights [13, pp.45-46].

Aggression has always been associated with the violation of human rights. Unfortunately, social progress and the development of humanist ideas have not improved the situation with regard to human rights at the international level, and the numerous conflicts from the Second World War to the current wars in Ukraine and the Middle East have demonstrated the inability of international sanctioning mechanisms, with the law of the strongest continuing to operate and generating crimes on a horrifying scale.

This article aims to examine how the phenomenon of torture is criminalized in international criminal law, as well as the mechanisms through which criminal responsibility arises in cases where such acts are committed in armed conflicts. The paper also analyzes the main challenges facing the international criminal justice system in combating such acts, including the jurisdictional limits of the International Criminal Court. To this end, the analysis will be structured beginning with the international legal framework for the criminalization of torture, continuing with torture in armed conflicts — criminalization and international criminal responsibility — and concluding with contemporary challenges

in the application of international criminal responsibility.

Materials and methods: This study was elaborated through the use of a body of primary and secondary legal materials, selected according to their relevance to the investigated subject matter. The methodological foundation of the research consists of the dogmatic method, which ensures the systematic interpretation of applicable international legal norms. The historical method and the comparative method were also employed, each distinctly contributing to the rigorous and comprehensive analysis of the investigated phenomenon.

Discussions and results obtained. The international legal framework for the criminalization of torture in armed conflicts is a layered and coherent one, built on three pillars: international criminal law, international human rights law, and international humanitarian law. These three normative systems confer upon the prohibition of torture an absolute and universal character, the violation of which entails individual criminal responsibility.

From the long list of normative acts dedicated to the prevention and combating of torture, the most relevant ones for both combatants and civilians are cited below.

The Regulations respecting the Laws and Customs of War on Land, Annex to the Fourth Hague Convention of 1907 concerning the Laws and Customs of War on Land, provides in Article 4 that "Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated" [2]. Article 4 of the Regulations annexed to the Fourth Hague Convention of 1907 does not contain an express prohibition of torture, but establishes an obligation of humane treatment of prisoners of war. Therefore, any form of ill-treatment, including torture, is implicitly excluded.

The Geneva Conventions of 1949 and the Additional Protocols of 1977 provide that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria [7].

The Universal Declaration of Human Rights, adopted on 10 December 1948, provides in Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" [3].

The International Covenant on Civil and Political Rights, adopted on 16 December 1966 in New York, stipulates in Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation" [4].

The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, stipulates in Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" [5].

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held from 22 August to 3 September 1955 in Geneva, established a set of minimum rules for the treatment of prisoners, subsequently approved by the Economic and Social Council through Resolution No.663 C (XXIV) of 31 July 1957 and supplemented by Resolution No.207 (LXII) of 13 May 1977. Thus, "Article 31 of this document provides that corporal punishment, confinement in a dark cell, and all cruel, inhuman, or degrading punishments shall be completely prohibited as disciplinary sanctions. Article 32(1): Punishments by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain

it. Article 33: Instruments of restraint, such as handcuffs, chains, irons, and straitjackets, shall never be applied as a punishment. Chains and irons shall not be used as restraints" [6, p.11].

The UN Convention of 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in Article 1, establishes the concept of torture and defines it as a distinct and the most serious form of ill-treatment, characterized by the intensity of suffering, intent, and the involvement of a public authority agent, in relation to cruel, inhuman, or degrading treatment [9].

A landmark moment in the development of international criminal law, including in the area of torture, was constituted by the International Criminal Tribunal for the former Yugoslavia. The Trial Chamber found that the prohibition of torture had acquired the status of jus cogens, which may be defined as a peremptory norm in international law from which no derogation is permitted. The Tribunal further identified as elements of the offence of torture "the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession, or of punishing, intimidating, humiliating, or coercing the victim or a third person, or for any reason based on discrimination of any kind against the victim or a third person. For such an act to constitute torture, one of the parties must be a public official or must, in any event, act in a non-private capacity, for example, as a de facto organ of a state or of any other entity exercising authority" [10].

The Rome Statute and the establishment of the International Criminal Court represent the apex of legal evolution in the criminalization of torture, codifying the jurisprudence of previous international tribunals, surpassing the limits of the Convention against Torture, and establishing a permanent mechanism for holding perpetrators accountable [11].

Although international law has evolved significantly in the area of the prohibition of torture — from the Hague Conventions to the Rome Statute and the establishment of the International Criminal Court — the reality is that the practice of contemporary armed conflicts demonstrates a profound gap between the written norm and the reality on the battlefield.

Reality demonstrates that both armed conflicts and "special military operations" create a permissive environment for the application of torture, premised on justifications such as defeating the adversary, national defense, ideological or religious excuses, or as a "method of interrogation", as evidenced by the judgment of the International Criminal Tribunal for the former Yugoslavia in the Furundžija case, in which the Tribunal held that the prohibition of torture had acquired jus cogens status and that torture committed in a military context entails individual criminal responsibility.

Torture in Armed Conflicts: Criminalization and International Criminal Responsibility: According to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, torture means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" [9].

The Rome Statute of 17 July 1998 of the International Criminal Court criminalizes torture both as a crime against humanity (Article 7(1)(f)) and as a war crime (Article 8(2)(a)(ii); Article 8(2)(c)(i)) [11]. The Statute does not provide a definition of torture; accordingly, in 2002 the Elements of Crimes was adopted, an auxiliary instrument that details element by element each offence provided for in the Statute.

Thus, according to the Elements of Crimes, torture as a crime against humanity is understood as "the intentional infliction of severe physical or mental pain or suffering upon one or more persons in the custody or under the control of the perpetrator, provided that such pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions, committed as part of a widespread or systematic attack directed against any civilian population, with the perpetrator's knowledge of or intent that the conduct be part of such an attack" [12, p.5].

Regarding torture as a war crime, the Rome Statute of the International Criminal Court divides war crimes into those committed in international armed conflict and those committed in non-international armed conflict.

Torture as a war crime in international armed conflict is understood as "the intentional infliction of severe physical or mental pain or suffering upon one or more persons protected under one or more of the Geneva Conventions of 1949, committed for the purpose of obtaining information or a confession, as punishment, intimidation, coercion, or for any reason based on discrimination of any kind, in the context of and in association with an international armed conflict of which the perpetrator was aware, as well as the factual circumstances that established the protected status of the victim" [12, p.10].

Torture as a war crime committed in a non-international armed conflict is understood as "the intentional infliction of severe physical or mental pain or suffering upon one or more persons who were hors de combat or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, committed for the purpose of obtaining information or confessions, as punishment, coercion, intimidation, or for any reason based on discrimination of any kind, committed in the context of and in association with a non-international armed conflict of which the perpetrator was aware, as well as the factual circumstances that established the protected status of the victim" [12, p.22].

Following the analysis of the concept of torture as set out in the 1984 UN Convention and the Rome Statute of the International Criminal Court, a fundamental difference based on two key pillars is identified:

1. The 1984 UN Convention limits torture to acts committed by state representatives, whereas the Elements of Crimes of the Rome Statute has a broader scope, encompassing non-state actors as well — a reality of contemporary armed conflicts where non-state groups are active participants. An example of a non-state group involved in contemporary armed conflicts is the "Wagner Group" in Ukraine.

2. The 1984 UN Convention is an instrument of international human rights law that obliges states to prohibit torture, whereas the Elements of Crimes of the Rome Statute is an instrument of international criminal law that guides international criminal responsibility.

A reference point in refining the concept of torture as a war crime was the International Criminal Tribunal for the former Yugoslavia, *the Furundžija case*, which provided a definition of torture in international humanitarian law as "the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession, or of punishing, intimidating, humiliating, or coercing the victim or a third person, or for any reason based on discrimination of any

kind against the victim or a third person. For such an act to constitute torture, one of the parties must be a public official or, in any event, must act in a non-private capacity, for example, as a de facto organ of a state or of any other entity exercising authority". The Trial Chamber of the Tribunal further held that rape and other serious sexual assaults in situations of armed conflict may constitute torture (*the* Čelebići *case*). Accordingly, the Tribunal confers upon the prohibition of torture the status of a jus cogens norm [10].

In the context of armed conflicts, human rights violations acquire a systemic character, directly affecting what legal scholarship describes as the "immutable core of fundamental rights", which includes the right to life, the prohibition of torture and inhuman or degrading treatment, and the right to a fair trial. These rights are absolute in character, being inherent to human nature, inalienable and indispensable to the existence of the individual, which is why they cannot be restricted even in exceptional circumstances such as war [14].

In academic literature, Stuart Casey-Maslen emphasizes that torture committed in the context of and in direct connection with an armed conflict constitutes, unequivocally, a war crime under international law. Furthermore, the author highlights that when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of that attack, torture falls within the category of crimes against humanity, regardless of whether it occurs within or outside an armed conflict. With regard to the relationship between torture and genocide, it is noted that torture is not autonomously qualified as an act of genocide, even when committed with the specific intent to destroy, in whole or in part, a protected group. However, in certain circumstances, torture may constitute a material element of genocidal acts, insofar as it involves causing serious bodily or mental harm to members of the targeted group [15].

Contemporary legal scholarship emphasizes that torture, while constituting in itself a serious violation of fundamental rights, acquires a higher legal gravity when committed as part of a widespread or systematic attack directed against the civilian population, thereby being qualified as a crime against humanity. In this regard, crimes against humanity represent autonomous international offences, characterized by the scale or organized nature of the acts of violence and their orientation against civilians, encompassing acts such as torture, murder, or sexual violence. An essential aspect is that these crimes may be committed both in the context of international and non-international armed conflicts, without requiring the existence of an inter-state conflict, and may be attributed to both state and non-state actors involved in hostilities. Furthermore, although international mechanisms such as the International Criminal Court provide the legal framework for sanctioning such acts, their effectiveness is often limited by deficiencies in national justice systems and by the lack of effective international cooperation in this area. In this context, the International Criminal Court plays an essential role in holding perpetrators criminally accountable, pursuant to the Rome Statute of the International Criminal Court, which confers upon it jurisdiction over the most serious offences, including genocide, crimes against humanity, and war crimes. However, the effectiveness of this mechanism is limited by the principle of complementarity and by jurisdictional constraints, particularly in situations where states are not parties to the Statute or do not cooperate with the international court, which in practice leads to difficulties in ensuring effective criminal accountability for acts of torture committed in armed conflicts [16].

The analysis of criminal responsibility for war crimes highlights the fact that International Humanitarian Law establishes a set of binding norms applicable during armed conflicts, the serious violation of which entails legal responsibility. Within this framework,

serious violations of the norms enshrined in the Geneva Conventions and the Rome Statute of the International Criminal Court may constitute war crimes, engaging both individual responsibility and, under certain conditions, state responsibility. The distinct role of command responsibility, as a particular form of individual criminal responsibility specific to international criminal law, is also noteworthy. In this context, holding perpetrators criminally accountable represents an essential mechanism for ensuring compliance with the laws of war and for preventing abuses during armed conflicts.

The evolution of individual criminal responsibility for serious violations of human rights reflects the profound transformation of international law, from a system centered exclusively on states to one that recognizes the direct responsibility of individuals for acts committed under state authority. Traditionally, state officials enjoyed broad immunity for acts performed in the exercise of their functions, and international law did not effectively regulate their conduct toward their own citizens. This paradigm was radically altered after the Second World War, when, in the wake of the atrocities committed, the principle of individual criminal responsibility in international law was established, in particular through the Nuremberg trials, which held that individuals may be held accountable for war crimes and crimes against humanity, regardless of their official position or superior orders received. This evolution formed the basis for the subsequent development of international criminal law and the consolidation of modern mechanisms for sanctioning acts such as torture, enshrining the idea that the protection of human dignity requires not only the establishment of norms but also the institution of effective mechanisms for holding perpetrators of serious violations accountable [17].

The author Rogier Bartels highlights that, within international criminal law, the legal qualification of armed conflicts constitutes a determining element for establishing the applicability of international humanitarian law norms and, implicitly, for engaging international criminal responsibility for war crimes. In this regard, the distinction between international armed conflict and non-international armed conflict, enshrined in fundamental instruments such as the Geneva Conventions of 1949 and the Additional Protocols of 1977, directly influences both the scope of application of legal norms and the legal characterization of unlawful acts. Furthermore, the jurisprudence of international criminal courts, particularly the ad hoc tribunals and the International Criminal Court, has played an essential role in clarifying these concepts, developing relevant criteria — such as the intensity of violence and the degree of organization of the parties involved — for identifying the existence of an armed conflict. At the same time, an erroneous qualification of the nature of the conflict may generate negative consequences both for the correct application of international humanitarian law and for the respect of the procedural rights of the accused, including the right to a fair trial, which underscores the need for a rigorous and coherent approach in the legal qualification of armed conflicts.

In the doctrine of international criminal law, it is emphasized that the criminalization of torture has deep historical roots, having been recognized as a serious violation of the laws and customs of war since the post-World War I period, when it was included in the list of international crimes drawn up at the Paris Peace Conference of 1919. Even in the absence of an initial conventional codification, the prohibition of torture was grounded in customary law and in the "dictates of humanity", enshrining the idea that the infliction of suffering for punitive or coercive purposes is inadmissible. Subsequently, this prohibition was reinforced by the jurisprudence of the Nuremberg Tribunal, which held that superior orders cannot constitute a justification for acts of torture or other inhumane treatment. The subsequent normative evolution led to the express consecration of torture as an in-

ternational offence in legal instruments such as Control Council Law No. 10, which was later adopted and further developed in the statutes of the ad hoc international criminal tribunals and in the Rome Statute of the International Criminal Court. Today, torture is recognized both as a war crime and as a crime against humanity, applicable also in non-international armed conflicts and, under certain conditions, even in the absence of an armed conflict [18].

In the context of contemporary armed conflicts, legal scholarship highlights that serious violations of international humanitarian law norms are not limited to direct acts of violence but may also include indirect forms of harm to the integrity of the person, such as the refusal or obstruction of humanitarian assistance. Thus, the deliberate deprivation of essential resources such as food, water, or medical care may lead to serious suffering and may be qualified as a war crime, insofar as it affects the civilian population or persons outside of hostilities. This perspective underscores the fact that the protection afforded by International Humanitarian Law aims not only at prohibiting direct violence but also at preventing any practices that may generate suffering incompatible with human dignity. Among the most recent conflicts, mention may be made of the invasion of Ukraine in 2022, the conflict in Sudan in 2023, the Hamas invasion of Israel at the end of 2023 and the Israeli invasion of the Gaza Strip, including the broader conflict in the Middle East. All of these conflicts record massive violations of human rights. The use of various types of weapons, abuses against prisoners and civilians in occupied territories, the destruction of vital infrastructure, as well as acts of atrocity specific to warfare represent a negative dimension of armed confrontation. These criminal acts have no justification and must be sanctioned with severity. In such circumstances, two determining factors of criminal responsibility for war crimes arise: 1) prosecution, which is an extremely difficult process; and 2) adjudication. In such circumstances, prosecution is extremely difficult, the main challenge being the collection and preservation of evidence.

The analysis of the international normative framework for the criminalization of torture in armed conflicts reveals the existence of a layered and coherent legal system, progressively constructed from the Hague Conventions of 1907 to the Rome Statute of the International Criminal Court and the Elements of Crimes, which confer upon the prohibition of torture an absolute and universal character. Nevertheless, the existence of a solid and well-constructed normative framework does not in itself guarantee effectiveness. The enormous gap between the written norm and the reality of contemporary armed conflicts demonstrates that the criminalization of torture remains insufficient in the absence of effective mechanisms for enforcement and criminal accountability. It is precisely this gap that constitutes the fundamental challenge of international law, which will be examined further below.

Contemporary Challenges in the Application of International Criminal Responsibility. The founding treaty of the International Criminal Court, known as the Rome Statute with its Elements of Crimes, grants the Court jurisdiction over four main crimes: 1) genocide; 2) war crimes; 3) crimes against humanity; and 4) the crime of aggression [19]. Established for the investigation and punishment of crimes of such magnitude as to trigger concern and involvement at the international level, it is paradoxically not equipped with a police force capable of acting freely on the territory of affected states. Investigators find themselves in the position of having to cooperate with or overcome the resistance of precisely those authorities whose inaction necessitated international intervention. The challenge, particularly with regard to states that are openly or tacitly hostile to such investigations, lies in finding the right combination of legal coercion and, to the

extent possible, direct action to enable proper investigations to be conducted [20, p.363].

Ensuring the protection and prosecution of these crimes is extremely difficult, the first problem being the loss or destruction of evidence. According to testimonies from citizens of various regions who were present in areas of armed conflict, mass executions of the civilian population took place during the period of occupation, people were tortured, women were abused and raped, and many citizens disappeared. Without doubt, in such circumstances, access to justice and the benefit of a fair trial are inconceivable. The most alarming aspect is that the majority of evidence is destroyed or disappears, which significantly complicates the investigation of cases. This problem is further aggravated by the principle of complementarity, according to which the International Criminal Court intervenes only when the state concerned is unable or unwilling to investigate, thereby creating a vicious circle. It is precisely those states that allow the destruction of evidence that also obstruct national investigations [14].

Beyond the practical challenges related to the collection of evidence, the effectiveness of the International Criminal Court is also limited by the refusal of certain world powers to recognize its authority. The International Criminal Court, on the one hand, has potentially unlimited geographical jurisdiction over international crimes; at the same time, the attitude of some of the world's most influential states — the Russian Federation, the United States, China, India, and Israel — which are not members of the International Criminal Court, must not be overlooked. The absence of these states creates a serious impunity gap, as their citizens and officials cannot be prosecuted without their voluntary cooperation.

Furthermore, the United States imposed sanctions against officials of the International Criminal Court who issued an arrest warrant in the name of Israeli Prime Minister Benjamin Netanyahu [21]. Russia withdrew its signature from the Statute in 2016 following the opening of the investigation into Crimea [22]. Although the International Criminal Court issued an arrest warrant for Israeli Prime Minister Benjamin Netanyahu, he visited Hungary — a founding member state of the Court — without any consequences, and on several occasions, Hungary declared its intention to withdraw from the Court [23].

This demonstrates that political pressure can undermine the very foundations of international criminal justice. Under these conditions, victims of international crimes are often left without access to justice, and the principle of the inevitability of punishment is gravely compromised.

Conclusion. The analysis of the international normative framework for the criminalization of torture in armed conflicts reveals the existence of a layered and coherent legal system, progressively constructed from the Hague Conventions of 1907 to the Rome Statute of the International Criminal Court and the Elements of Crimes, which confer upon the prohibition of torture the character of a jus cogens norm, being criminalized both as a crime against humanity and as a war crime, applicable in both international and non-international armed conflicts.

Nevertheless, the existence of a normative framework does not in itself guarantee practical effectiveness. The gap between the written norm and the reality of armed conflicts constitutes the fundamental challenge of the international criminal justice system. The destruction of evidence, the obstruction of national investigations, the absence of an international police force, and the refusal of certain world powers to recognize the jurisdiction of the Court create conditions of impunity in which victims of international crimes are often left without access to justice.

Recent cases — the conflict in Ukraine, the Hamas invasion of Israel, the Israeli in-

vasion of the Gaza Strip, and the conflict in the Middle East — demonstrate that the international mechanism for holding perpetrators criminally accountable is subject to unprecedented political pressures. The sanctions imposed by the United States against officials of the International Criminal Court, Russia's withdrawal from the Rome Statute, and the visit of Israeli Prime Minister Benjamin Netanyahu to Hungary — a Member State of the Court — without any legal consequences, demonstrate that political will remains the determining factor in the effective application of international criminal law. The principle of the inevitability of punishment is gravely compromised at the international level.

International criminal justice stands at a historic crossroads: either it consolidates its authority and independence from political pressures, or it risks becoming a formal instrument devoid of real effectiveness. Overcoming these challenges requires the strengthening of international cooperation in the collection of evidence, the expansion of the universality of the Rome Statute, and the reinforcement of mechanisms for the protection of victims in conflict zones.

Bibliographical referances

1. Cauia A. Drept internațional umanitar. Chișinău: Ed. Notograf Prim. 2020. 416 p.
2. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on land. The Hague, 18 October 1907. Available: https://ihl-databases.icrc.org/ru/ihl-treaties/hague-conv-iv-1907?activeTab= (accessed 02.04.2026).
3. Declarația universală a drepturilor omului, adoptată la 10 decembrie 1948 la New-York. Available: https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/rum.pdf (accessed 02.04.2026).
4. Pactul internațional cu privire la drepturile civile și politice din 16.12.1966 (viza la 06.04.2026). Available: https://ombudsman.md/post-document/pact-international-nr-1966-din-16-12-1966-cu-privire-la-drepturile-civile-si-politice-2/.
5. Convenția Europeană pentru apărarea drepturilor omului și a libertăților fundamentale din 04.11.1950. Available: https://www.echr.coe.int/documents/d/echr/convention_ron (accessed 02.04.2026).
6. Ansamblul de reguli minime pentru tratamentul deținuților și recomandările rereferitoare la acesta (Primul Congres al Națiunilor Unite pentru prevenirea crimei și tratamentul delicvenților, Geneva între 22 august – 3 septembrie, 1995. În: Culegeri de acte internaționale în domeniul justiției penale. Vol. I. Convenții internaționale. Chișinău, 2011. 516 p.
7. Convenția de la Genera din 12 august 1949 privitoare la tratamentul prizonierilor de război. Available: https://legislatie.just.ro/Public/DetaliiDocument/255597 (accessed 03.04.2026).
8. Jeffry Alexander Ch Likadja, Novilinda Dwiputri Irtanti Saudila. Violation of Human Rights and the Jurisdiction of the International Criminal Court. In: Dynamics of Politics and Democracy, 2023, Vol. 2 (2), pp.101-110. Available: https://goodwoodpub.com/index.php/DPD/article/download/3281/1159 (accessed 03.04.2026).
9. Convenția împotriva torturii și altor pedepse și tratamente cu cruzime, inumane sau degradante, adoptată la New York la 10.12.1984. Available: https://avp.ro/wp-content/uploads/2020/07/conventie_mnp.pdf (accessed 05.04.2026).
10. Furudzija Case: The judgement of the Trial Chamber Anto Furundzija found guilty on both charges and sentence to 10 years in prison. Available: https://www.icty.org/en/sid/7609 (accessed 03.04.2026).

11. Statutul Curții Penale Internaționale, semnat la 17.07.1998, în vigoare din 01.07.2000. Available: https://www.legal-tools.org/doc/759f54/pdf/ (accessed 03.04.2026)
12. Elements of crimes published by the International Criminal Courts, 2013. Available: https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf (accessed 04.04.2026).
13. Nigel S. Rodley, Pollard Matt. The treatment of prisoners under international law. 3rd ed. Oxord, New York: Oxford University Press, 2009. Available: https://ru.scribd.com/document/688945862/2 (accessed 05.04.2026).
14. Nykyforak V. ș.a. Human rights protection during armed conflicts: Problem aspects. In: Amazonia Investiga, 2024, Vol. 13 (75), pp. 80-88. Available: https://doi.org/10.34069/AI/2024.75.03.7 (accessed 04.04.2026).
15. Casey-Maslen S. Torture and Ill-Treatment as International Crimes. In: The Prohibition of Torture and Ill-Treatment under International Law, 2025, pp.278-298. Available: https://doi.org/10.1017/9781009610162.013 (accessed 04.04.2026).
16. Jeffry Alexander Ch Likadja, Novilinda Dwiputri Irtanti Saudila. Violation of Human Rights and the Jurisdiction of the International Criminal Court. In: Dynamics of Politics and Democracy, 2023, Vol. 2 (2), pp.101-110. Available: https://goodwoodpub.com/index.php/DPD/article/download/3281/1159 (accessed 05.04.2026).
17. Ratner Steven R., Abrams Jason S., Bischoff James L. Individual Accountability for Human Rights Abuses: Historical and Legal Underpinnings. In: Ratner, Steven R.; Abrams, Jason S.; Bischoff, James L. (eds.), Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy, 3rd ed., Oxford University Press, 2009. pp.1-26. Available: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1453&context=book_chapters (accessed 05.04.2026).
18. Bartels R. The Classification of Armed Conflicts by International Criminal Courts and Tribunals. In: International Criminal Law Review, 2020, Vol. 20 (4), pp.595-668. Available: https://brill.com/view/journals/icla/20/4/article-p595_595.xml?srsltid=AfmBOoo1WRTgB12veMWL25PejAkixcneP55IcBwOgcv0l8bBN0Cq9C7L (accessed 05.04.2026).
19. International Criminal Court. About the Court. Available: https://www.icc-cpi.int/about/the-court.
20. Cassese A., ș.a. Cassese's international criminal law. Third Edition. Oxford: University Press, 2013, 414p.
21. Moldpress.md. Administrația Trup a impus sancțiuni împotriva a patru judecători ai Curții Penale Internaționale. Available: https://www.moldpres.md/rom/externe/administratia-trump-a-impus-sanctiuni-impotriva-a-patru-judecatori-ai-curtii-penale-internationale (accessed 06.04.2026).
22. Moldpress.md. Rusia își retrage semnătura din Statutul de la Roma al CPI. Available: https://www.moldpres.md/rom/externe/rusia-isi-retrage-semnatura-din-statutul-de-la-roma-al-cpi (accessed 06.04.2026).
23. bbc.com. Hungary withdraws from International Criminal Court during Netanyahu visit. Available: https://www.bbc.com/news/articles/c807lm2003zo (ccessed 06.04.2026).

CZU 343.341:343.9 **DOI: https://doi.org/10.5281/zenodo.20915846**

MANIFESTATIONS, TRENDS AND DYNAMICS OF TRANSNATIONAL ORGANIZED CRIME

Boris BRÂNCOVEANU,
PhD Student,
Senior Officer, Academic Mobility Service,
Department for International Cooperation and European Integration (DCIIE),
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID 0009-0004-5871-4492

Abstract

A quarter of a century after the adoption of the United Nations Convention against Transnational Organized Crime (Palermo, 2000), current geopolitical and technological realities have surpassed the scenarios for which that legal framework was originally designed. The classical model of hierarchical clandestine organizations has been replaced by fluid networks lacking a visible center, capable of symbiotically integrating into the formal economy and acting as autonomous geopolitical actors.

Drawing upon the "wave theory" proposed by Phil Williams (2024), the conceptual analyses developed by Iurie Larii (2020, 2025), and the studies on paramilitary formations conducted by Radion Cojocaru and Andrei Cazacicov (2017), this article examines the contemporary transformations of transnational organized crime (TOC). The analysis highlights the expansion of hybrid illicit markets, cybercrime, the reconfiguration of human trafficking in the context of regional conflicts, and the security implications for states affected by systemic vulnerabilities, such as the Republic of Moldova.

The article concludes that, in the absence of a fundamental reconceptualization of the phenomenon and strengthened regional cooperation, current legal instruments risk becoming increasingly obsolete.

***Keywords**: transnational organized crime, geopolitical processes, globalization, illicit markets, cybercrime, drug trafficking, human trafficking, hybrid spaces, grey zone.*

DOMENIILE DE MANIFESTARE, TENDINȚELE ȘI DINAMICA CRIMINALITĂȚII ORGANIZATE TRANSNAȚIONALE

Abstract

La un sfert de secol de la adoptarea Convenției Națiunilor Unite împotriva Criminalității Organizate Transnaționale (Palermo, 2000), realitățile geopolitice și tehnologice actuale au devansat scenariile pentru care a fost conceput acel cadru juridic. Modelul clasic al asociațiilor clandestine piramidale a fost înlocuit de rețele fluide, lipsite de un centru vizibil, capabile să se contopească simbiotic cu economia formală și să acționeze ca actori geopolitici autonomi.

Utilizând ca repere „teoria valurilor" propusă de Phil Williams (2024), analizele conceptuale realizate de Iurie Larii (2020, 2025) și cercetările privind formațiunile paramilitare semnate de Radion Cojocaru și Andrei Cazacicov (2017), prezentul articol examinează mutațiile contemporane ale criminalității organizate transnaționale (COT). Analiza evidențiază expansiunea piețelor hibride, a criminalității cibernetice, reconfigurarea traficului de ființe umane pe fondul conflictelor regionale și impactul de securitate asupra unor state cu vulnerabilități sistemice, precum Republica Moldova.

Se concluzionează că, fără o reconceptualizare fundamentală a fenomenului și o cooperare regională consolidată, instrumentele juridice actuale riscă să devină anacronice.

***Cuvinte-cheie**: criminalitate organizată transnațională, procese geopolitice, globalizare, piețe ilicite, criminalitate cibernetică, droguri, trafic de ființe umane, spații hibride, zona gri.*

Introduction. A quarter of a century after the adoption of the United Nations Convention against Transnational Organized Crime (Palermo, 2000), contemporary geopolitical and technological transformations have substantially outpaced the operational and conceptual assumptions underpinning this legal framework. The traditional model of hierarchical, territorially anchored clandestine organizations has progressively given way to fluid, decentralized and adaptive network structures, characterized by the absence of a discernible center of command and by a high degree of integration within licit economic systems. In certain contexts, such networks increasingly function as autonomous actors with quasi-geopolitical attributes.

Building on Phil Williams' "wave theory" (2024), the conceptual frameworks advanced by Iurie Larii (2020, 2025), and the empirical analyses of paramilitary formations conducted by Radion Cojocaru and Andrei Cazacico (2017), this article examines the evolving manifestations of transnational organized crime (TOC). The study focuses on the expansion of hybrid illicit markets, the intensification of cyber-enabled criminal activities, and the structural reconfiguration of human trafficking dynamics in the context of regional armed conflicts. It further assesses the implications of these developments for states exposed to systemic vulnerabilities, with particular reference to the Republic of Moldova.

Discussions and results obtained. I. The International Conventional Framework and Its Conceptual Limitations. A retrospective assessment of the quarter-century that has elapsed since the adoption of the United Nations Convention against Transnational Organized Crime at Palermo in December 2000 highlights the axiomatic role of this legal instrument as a genuine cornerstone of contemporary transnational criminal law [1]. At the time of its codification, the international community operated with a predictable typology of the threat: strictly hierarchical groups, quasi-military internal structures, an exclusive focus on financial profit accumulation, and operations conducted entirely outside the legal framework. During that period, the traditional Sicilian mafia model and the major Colombian cartels, such as the Medellín Cartel, constituted the principal empirical and analytical benchmarks.

In the contemporary landscape, however, this restrictive interpretative framework risks becoming anachronistic. The phenomenon that the Palermo Convention sought to circumscribe has metamorphosed into a multidimensional criminal universe characterized by diffuse and profoundly destabilizing structural complexity [2]. From a doctrinal perspective, the Palermo Convention deliberately avoided formulating an exhaustive conceptual definition of transnational organized crime, opting instead for a pragmatic approach based on the enumeration of its essential constitutive elements: the association of a group composed of at least three persons, the existence of a durable structure over time, the purpose of obtaining material or financial benefits, and the presence of a clear transnational dimension.

This definitional prudence, dictated at the time by the imperatives of international diplomatic consensus, proved to be a double-edged sword. On the one hand, it ensured the political success of the document by facilitating its near-universal ratification, currently bringing together 190 States Parties. On the other hand, it generated a major conceptual vacuum, subsequently filled in national practice by fragmented legislative paradigms that are often incompatible with one another.

Contemporary criminological doctrine emphasizes this gap, arguing that the UN definition, deeply rooted in the realities of the 1990s, has become partially outdated. It is incapable of fully capturing the essence of modern networks, which no longer operate in direct opposition to the state but increasingly develop relationships of structural symbi-

osis with it, often evolving into autonomous geopolitical actors.

Within this analytical framework, the valorization of domestic scholarly contributions becomes imperative for deciphering regional specificities and the nuances of criminal manifestations. In this regard, professor Iurie Larii addresses, in his textbook "*Criminology*" [3], as well as in the seminal study "*The Impact of Globalization and Geopolitical Processes on Transnational Organized Crime*" [4], the theoretical, conceptual, and macro-geopolitical dimensions of the phenomenon. The author substantiates the thesis that "organized crime, particularly its transnational form, constitutes one of the most serious threats not only to the security of individual states but also to the entire international community," expressly warning that "its danger intensifies with the increasing levels of mobility, flexibility, and adaptability to political and socio-economic changes".

This integrated theoretical perspective provides the epistemological key to understanding why national public policies and international strategies traditionally focused on prevention and suppression often fail to mitigate or outpace the accelerated dynamics of the phenomenon. This criminological diagnosis resonates profoundly with contemporary geopolitical realities, where the rigidity of state mechanisms is continuously counterbalanced by the fluidity and transformative capacity of hybrid criminal networks.

In another related dimension of specialized research, scholars Radion Cojocaru and Andrei Cazacicov, in their study "*Illegal Paramilitary Formation as a Form of Manifestation of Organized Crime*" [5], investigate the various forms through which criminal networks manifest themselves. The authors rigorously highlight the clear legal and doctrinal distinctions that this type of organization presents in relation to other classical forms of criminal association, while also outlining the essential structural characteristics and qualification criteria of illegally operating paramilitary formations. These scientific contributions prove fundamental for deciphering the regional specificity of the criminogenic phenomenon, providing indispensable explanatory benchmarks for the analysis of security vulnerabilities in the Republic of Moldova and throughout the post-Soviet space, where the presence of hybrid militarized structures has left deep marks on institutional stability.

II. Dynamics of Global Illicit Markets: Polycriminality, Synthetic Drugs and the Cyber Vector. This theoretical diagnosis concerning the obsolescence of the traditional conventional framework is fully confirmed by global empirical data reflected in recent monitoring reports. Thus, the Global Organized Crime Index 2025, developed under the auspices of the *Global Initiative Against Transnational Organized Crime* [6], indicates that an alarming number of 66 states—representing more than one-third of the total membership of the United Nations—are situated within the zone of maximum systemic risk, defined by the critical intersection of high levels of criminality and extremely low institutional resilience. This statistical configuration reflects the accelerated proliferation of global illicit markets, dominated by the complex phenomenon of polycriminality.

In this context, the expansion of synthetic drugs, comprehensively documented by UNODC in the *World Drug Report* 2024 [7], has already surpassed the historic fentanyl crisis in North America in both scale and severity, spreading at a geometric rate throughout Europe and Southeast Asia. To decipher the underlying drivers of this development, Phil Williams [8], in his seminal study "*The Fifth Wave: Organized Crime in 2040*", proposes a conceptual periodization articulated through successive waves. This analytical paradigm traces the transformation of the phenomenon from classical mafia manifestations and traditional narcotics trafficking networks, through the transitional phase marked by the impact of economic globalization and the explosion of cybercrime, culminating in what the author designates as the "fifth wave". Within this new era, transnational organized

crime is metamorphosing from an external threat into a structural phenomenon deeply embedded within the technological, digital, and geopolitical architecture of the contemporary world.

The same author judiciously observes that the reconfiguration of market preferences toward synthetic drugs and the creation of customized cocktails of psychoactive substances—combining stimulants with depressants—constitute a fundamental qualitative paradigm shift in illicit markets, extending far beyond a mere quantitative evolution in the supply of prohibited substances. Similarly, illicit activities that were once classified as marginal "non-violent" offenses—such as cybercrime and large-scale macroeconomic fraud—have migrated directly into the core of global economic disorder, asymmetrically and severely affecting states whose digital and institutional architectures exhibit systemic vulnerabilities.

Criminologist McKenzie O'Brien, whose theses are incorporated into Williams' prospective research [8], accurately captures the essence of this structural transformation. She demonstrates that contemporary criminal organizations, guided by a pragmatic instinct for adaptation to technological opportunities, have capitalized on the Internet, transforming it from a mere communication tool into an optimized infrastructure for the delivery of illicit services. This new operational environment has proven infinitely more accessible to users, considerably more resistant to traditional investigative methods due to encryption technologies, and, consequently, substantially more profitable from a financial perspective.

From a domestic perspective, researcher Veaceslav Ursu [9], in his doctoral dissertation "*Organized Crime: Criminological and Criminal-Law Aspects*", as well as in subsequent specialized studies co-authored with other scholars [10], provides an in-depth criminological analysis of the phenomenon through the prism of the evolution of the criminal policy of the Republic of Moldova. According to Veaceslav Ursu, organized crime constitutes a complex social phenomenon manifested through the activities of criminal groups oriented toward obtaining illicit profits. In this regard, he emphasizes that the primary instrument of systemic subversion employed by such groups is the legalization of criminal proceeds (money laundering), achieved through the channeling and infiltration of illicit capital into the lawful civil economy. This criminological diagnosis acquires even greater relevance in the current context of accelerated technological advancement. The availability of vast illicit financial resources enables modern criminal organizations to recruit and instrumentalize professional elites specializing in cybersecurity and information technology.

III. Human Trafficking and the Impact of Geopolitical and Climate Crises. Alongside emerging digital threats, human trafficking remains one of the most profitable and resilient sectors of transnational organized crime. In their study, Iurie Larii and Oleg Pohilă rigorously examine the mechanisms and criminological particularities of sexual exploitation targeting women and minors [3]. The authors bring to the forefront profound structural vulnerabilities—such as endemic poverty, chronic social exclusion, and major deficiencies within the educational system—which function as genuine recruitment and victimization vectors exploited by transnational criminal networks.

The normative dimension of this issue is further developed by Florena Esther Sterschi in her doctoral dissertation "*Transnational Crime: Criminal Sanctioning Framework and Prevention and Counteraction Policies*". The author emphasizes that the theoretical significance of the research lies in defining the conceptual foundations of criminal law and integrating extensive theoretical and practical material for identifying the operation-

al directions of organized crime [11]. Through this approach, new epistemological coordinates are established regarding the theoretical and methodological framework specific to the management of transnational organized crime, highlighting the urgent necessity of harmonizing criminal and criminal procedural legislation at both regional and international levels. Such normative unification constitutes an essential prerequisite for eliminating bureaucratic barriers and ensuring a rapid and effective judicial response to the investigation of complex cross-border crimes.

Looking toward future developments, Phil Williams [8] adds a particularly severe prospective dimension to this analysis. He argues that mass migratory flows generated by the intensification of global climate imbalances will fundamentally reshape the criminal geography of the twenty-first century, transforming migrant smuggling and illicit migration-related activities into what he describes as the "primary growth sector of the twenty-first century". This perspective emerges as a natural consequence of the convergence of asymmetric demographic pressures, environmental degradation, and the chronic inability of state institutions to effectively manage large-scale displaced populations.

Similarly, the high-intensity armed conflict triggered by the Russian invasion in February 2022 has reshaped the traditional profile of human trafficking in Ukraine, generating a hybrid criminal phenomenon that combines forced migration flows with illicit strategies aimed at evading military obligations [13]. Following the entry into force of the new mobilization legislation in May 2024—which lowered the conscription age threshold from 27 to 25 years and introduced mandatory military registration for all males between the ages of 18 and 60 through the centralized digital platform "Oberig" [14]—an exponential increase was recorded in the number of Ukrainian male citizens seeking the assistance of clandestine networks to leave the country illegally. Their primary objective was to avoid operational conscription into the armed forces [13, 15].

According to statistical data published by the State Border Guard Service of Ukraine, the highest concentration of attempted illegal border crossings was documented along the borders with Romania and the Republic of Moldova. These geographical areas present immediate physical vulnerabilities that were rapidly exploited for logistical purposes by transnational smuggling networks [16]. Investigative journalism and tactical assessment reports issued by the authorities reveal a concerning financial picture: the fees charged for facilitating illegal departure range between USD 5,000 and USD 22,000 per individual, with prices varying according to route complexity, risk level, and the logistical methods employed [13; 15; 17].

In this regard, the United Nations Office on Drugs and Crime (UNODC) issued an official warning in its July 2025 reports, concluding that the prolonged state of war has profoundly altered Ukraine's criminal landscape. The facilitation of illegal border crossings and assistance in evading military recruitment have crystallized into an autonomous and aggressively expanding field of criminal activity [19]. The same report highlights a significant economic transformation: while traditional transit flows for high-risk narcotics such as cocaine and heroin have experienced severe contractions due to the disruption of port and airport hubs, the domestic production and distribution infrastructure for synthetic drugs—particularly cathinones and methadone—has undergone explosive growth, being controlled by criminal groups capable of maintaining stable clandestine laboratories within the country [19].

This regional dynamic validates Phil Williams' fundamental thesis [8], according to which armed conflicts and acute governance deficits generate lucrative opportunities for organized crime by instantly transforming systemic vulnerabilities into major sourc-

es of profit. In the specific context of Ukraine, legal restrictions on leaving the country imposed upon military-age men—although legitimate from the perspective of national defense—have indirectly created a vast space for exploitation by clandestine networks, which have successfully monetized fear of death and the desperation associated with conscription. The phenomenon illustrates the exceptional adaptive capacity of organized crime to exploit emerging economic niches within volatile geopolitical environments.

IV. Economic Crime, Institutional Capture and Criminal Hybridization. From a functional perspective, economic crime and sophisticated money-laundering mechanisms constitute the true backbone of transnational organized crime (TOC), representing the channels through which illicit profits are cleansed and integrated into the formal economy. The primary strategic objective of any criminal organization is the long-term protection and preservation of accumulated capital. To achieve this state of financial immunity, criminal networks do not seek the violent replacement of state authority; rather, they pursue infiltration and the exercise of indirect, covert control over key public institutions.

The principal vectors of institutional penetration are systemic corruption and strategic blackmail, through which public officials and civil servants are either co-opted or coerced into serving the private agendas of criminal groups. Consequently, public institutions constitutionally entrusted with the prevention and suppression of crime are subverted from within, becoming logistical shields that provide protection, confidential information from ongoing investigations, or an appearance of legal legitimacy for illicit activities. This doctrinal assertion is corroborated by the recent historical experience of the Republic of Moldova, where the infamous one-billion-dollar banking fraud demonstrated the capacity of criminal networks to achieve institutional capture and to undermine the state's principal regulatory and oversight structures.

Furthermore, technological innovations function as a force multiplier for criminal networks. In his analyses, Williams predicts that by 2040, transnational organized crime will shift its operational epicenter into "hybrid spaces"—quasi-convergent environments in which the virtual and physical dimensions become fully intertwined. Within this emerging ecosystem, the implementation of artificial intelligence algorithms is expected to play a profoundly disruptive role, possessing the capacity to exponentially amplify existing threats, introduce new criminal typologies into the digital sphere, and irreversibly transform the methods used to investigate criminogenic risks.

Another alarming trend is the growing convergence and functional hybridization between transnational organized crime structures and terrorist or insurgent movements. In this regard, Radion Cojocaru and Andrei Cazacicov, in their studies dedicated to the dynamics of illegal paramilitary formations, observe that "in recent years the phenomenon of organized crime has intensified, advancing to a new level—transnational—which indicates an increased social danger" [5, p.62]. The authors demonstrate that such paramilitary formations can no longer be regarded as mere local gangs; rather, they represent a distinct and highly militarized form of organized crime manifestation. These groups possess specific structural attributes, including the capacity for territorial control, the use of military-grade weaponry, and the adoption of asymmetric warfare tactics—characteristics that pose unprecedented challenges to national security systems.

V. The New Geography of Crime: Criminal Hubs and Autonomous Geopolitical Actors. Along the same line of macro-structural analyses, T. Hall and his collaborators [21] emphasize that this phenomenon can no longer be regarded as a marginal anomaly but rather constitutes a fundamental and structural dimension of contemporary globalization.

The spatiality of transnational organized crime (TOC)—manifested through underground circuits of speculative capital, fixed cross-border logistical routes, and informal financial systems such as hawala—operates according to its own economic logic. Although these logics are conceptually distinct from those governing licit economies, they are deeply intertwined with the official circuits of corporate globalization, exploiting border liberalization and the fluidity of international transactions to conceal their operations.

Phil Williams expands this conceptual framework by identifying and mapping a number of global urban logistical nodes—such as Dubai, Marbella, and major emerging megacities—which he classifies as "criminal hubs" and "super-hubs". In the author's view, these spaces function as strategic nodes characterized by a high degree of "eigenvector centrality", interconnected on a global scale through secure illicit flows. A crucial theoretical conclusion is that such an "illegal geography" should not be simplistically interpreted as a temporary epiphenomenon of local underdevelopment; rather, it is structurally embedded within the very financial, legal, and logistical architecture of modern economic globalization.

This qualitative transformation of traditional criminal actors into genuine autonomous geopolitical actors represents one of the most disruptive developments for the rules-based international order. A study conducted in March 2026 at the initiative of the European Parliament [2] identifies and conceptualizes three emerging macro-structural categories on the international stage:

1. State-opposed criminal groups;
2. State-embedded criminal groups;
3. State-sponsored criminal groups.

Williams complements this analytical framework by arguing that major authoritarian powers—including the Russian Federation, the People's Republic of China, the Islamic Republic of Iran, North Korea, and Syria—are increasingly employing organized crime networks as asymmetric instruments of geopolitical competition within the "gray zone", transforming transnational criminal activities into tools for destabilizing Western democracies.

Another emerging field of research concerns the direct impact of climate change on the dynamics of organized crime. Mark Williams [2] advances the thesis that the accelerated degradation of the natural environment will inevitably generate new market niches arising from the acute scarcity of vital resources, including access to potable water reserves, food security, and control over critical mineral deposits indispensable for the global transition toward green energy. Organized crime structures are likely to seek monopolistic control over these scarcity-driven markets. Criminologist Lucia Tiscornia, whose conclusions are incorporated into Phil Williams' prospective model [8], argues that climate change produces significant imbalances in essential resource markets, facilitating their capture and control by organized criminal structures. Within this framework, accelerated environmental degradation and competition for strategic resources are likely to intensify the infiltration of criminal groups into vulnerable economic sectors and transnational supply chains.

From the perspective of domestic criminological doctrine, Iurie Larii highlights the necessity of a complex and multidimensional approach to organized crime, including an analysis of its geopolitical implications, considering such a perspective indispensable for identifying effective mechanisms for preventing and reducing the social danger generated by this phenomenon [4]. This methodological correlation demonstrates that security policies can no longer remain confined within purely judicial paradigms but must incor-

porate broader ecological and global strategic analyses.

VI. The Republic of Moldova Case Study: Systemic Vulnerability and Regional Projection. Within this complex international context, the Republic of Moldova constitutes an illustrative analytical model of a state structurally affected by multiple institutional vulnerabilities and security deficits. Geostrategically positioned at the fluid intersection between the European Union and the post-Soviet space, confronted with the existence of a de facto separatist territory (the Transnistrian region) where the constitutional authority of Chișinău is absent, and historically affected by systemic corruption and the capture of public institutions by oligarchic structures, the Republic of Moldova exemplifies how transnational organized crime (TOC) capitalizes on and amplifies latent governance crises. The transnational phenomenon not only exploits state weaknesses but actively instrumentalizes them in order to secure operational spaces of impunity.

In this regard, the large-scale embezzlement of the domestic banking system through the operation commonly known as the "one-billion-dollar bank fraud"—representing the macroeconomic equivalent of approximately 12–13% of the country's Gross Domestic Product (GDP), according to official estimates of the International Monetary Fund [22] and analyses published by the Civil Forum for Asset Recovery [23]—generated a profound systemic shock for a fragile emerging economy. The seminal study authored by Vincent Arnold [24] provides a detailed mapping of the financial engineering schemes and technical mechanisms employed in this large-scale fraud, while extensive investigations conducted by the Open Dialogue Foundation [25] reveal cross-party political connections and alarming dimensions of institutional capture.

Furthermore, large-scale operations conducted by Europol during 2026, which resulted in the dismantling of complex transnational narcotics trafficking networks, together with the documented systematic use of banking and settlement channels located in the Transnistrian region for illicit money-laundering operations, demonstrate that national vulnerability has evolved into a dangerous capacity for criminal projection at the regional level.

Professor Iurie Larii complements this criminological picture by introducing a macro-geopolitical analytical dimension, arguing that "national and international policies focused on the prevention and suppression of organized crime fail to mitigate the very rapid evolution of the phenomenon" [4, p.397]. In the author's view, this chronic operational gap necessitates "addressing the issues raised by organized crime, including through the assessment of its geopolitical dimensions", thereby transcending the traditional and purely criminal-law perspective, which has proven insufficient in relation to the current dynamics of threats. For the Republic of Moldova, adopting such an interpretative framework has gone beyond the sphere of mere doctrinal debate. It has become an imperative national security necessity, dictated directly by its sensitive geographical position along the fault line of competing geopolitical interests and by the persistence of the structural problems affecting the state apparatus.

In this context, the final sentence of 19 years' imprisonment handed down in April 2026 against a prominent oligarchic leader directly involved in orchestrating the banking fraud [26] underscores the depth and advanced degree of criminal infiltration into the highest echelons of power. Ultimately, the case of the Republic of Moldova demonstrates the necessity of definitively abandoning the narrow paradigms of classical security. It requires the adoption of a multidimensional and holistic analytical perspective, within which transnational organized crime is treated as a complex and hybrid adaptive system, capable of navigating fluidly across and erasing the traditional boundaries between legal-

ity and illegality, local and global, and public and private.

VII. Correlation with the Sustainable Development Goals (SDGs) and Strategic Recommendations. Analyses published by the United Nations Office on Drugs and Crime (UNODC) during the period 2024-2025 [27], documented through the official United Nations platform dedicated to monitoring the Sustainable Development Goals (SDGs), highlight the direct destructive impact that transnational organized crime exerts upon the 2030 Agenda. The phenomenon systematically undermines the foundations of peace, stability, and good governance (SDG 16), negatively affects the macro-structural indicators of global public health (SDG 3), hinders sustainable economic growth (SDG 8), and deepens socio-economic inequalities (SDG 10). Simultaneously, it stimulates and finances the illegal exploitation and accelerated degradation of natural resources and planetary ecosystems (SDGs 13, 14, and 15).

In order to formulate an effective defensive response capable of disrupting this dynamic of deterioration, Phil Williams proposes a series of strategic recommendations of critical importance, founded upon the necessity of reconfiguring contemporary security policies:

➢ *Doctrinal Paradigm Shift.* The focus of state institutions should move away from rigid attempts aimed exclusively at the physical apprehension of individual offenders and toward holistic strategies designed to limit, fragment, and eliminate the market opportunities and logistical resources available to criminal networks.

➢ *Adoption of Advanced Technologies.* Law enforcement agencies should prioritize the early and large-scale implementation of disruptive innovations in the fields of artificial intelligence, quantum computing, and advanced predictive data analytics.

➢ *Disruption of Logistical Nodes.* International operational resources should be strategically concentrated on the identification, structural degradation, logistical displacement, and complete dismantling of global criminal hubs and super-hubs.

➢ *Integrated Strategic Response.* A modern approach requires the formal recognition that transnational organized crime has increasingly been incorporated as an instrument of asymmetric geopolitical competition employed by authoritarian states, a reality that necessitates a coordinated strategic and defense-oriented response.

In conclusion, the research demonstrates that transnational organized crime has surpassed the boundaries of the classical paradigm established by the Palermo Convention, evolving into a complex, adaptive phenomenon deeply integrated into contemporary geopolitical, economic, and technological dynamics. The transformation of criminal networks into fluid, digitalized structures capable of exploiting institutional vulnerabilities, regional conflicts, and globalization processes confirms the necessity of reconsidering the conceptual and operational framework for the prevention and suppression of this phenomenon.

The analysis has shown that the expansion of cybercrime, the growth of synthetic drug markets, the reconfiguration of human trafficking patterns, and the intensification of institutional capture mechanisms generate direct risks to both national and international security. At the same time, the case of the Republic of Moldova illustrates how governance deficits, systemic corruption, and geopolitical vulnerabilities can transform fragile states into favorable environments for the expansion of transnational criminal networks.

Therefore, the effective counteraction of transnational organized crime requires the abandonment of exclusively repressive approaches and the adoption of a multidimensional strategy based on strengthening international judicial cooperation, enhancing the technological capabilities of law enforcement institutions, harmonizing normative mech-

anisms, and integrating the geopolitical dimension into security policies. In the absence of such reforms, traditional legal instruments risk becoming inadequate in relation to the dynamics and adaptive capacity of contemporary organized crime.

Bibliographical references

1. United Nations. United Nations Convention against Transnational Organized Crime (Palermo Convention). Adopted in New York on 15 November 2000; entered into force on 29 September 2003.
2. European Parliament, Directorate-General for External Policies of the Union. Addressing the Nature and Impact of Organised Crime on the International Scene: Understanding and Legislating for the Role of Organised Crime Groups as Geopolitical Actors. Study EXAS_STU(2026)783608, March 2026. Authors: Mark Williams, Joana de Deus Pereira, Elijah Glantz, Jennifer Scotland. Available: https://www.europarl.europa.eu/RegData/etudes/STUD/2026/783608/EXAS_STU(2026)783608_EN.pdf.
3. Larii Iurie, Pohilă Oleg. Crimes of Sexual Exploitation of Women and Children: Elements of Comparative Law, Criminological Analysis, and Prevention Measures. Chișinău: Editorial and Printing Department of the "Ștefan cel Mare" Academy of the Ministry of Internal Affairs, 2021. 272 p. ISBN 978-9975-121-979-8.
4. Larii Iurie. The Impact of Globalization and Geopolitical Processes on Transnational Organized Crime. In: Protection of Fundamental Human Rights and Freedoms in the Process of Ensuring Public Order and Security: Proceedings of the 4th International Scientific Conference, 5 December 2024. Chișinău, 2025, pp.397-404. ISBN 978-9975-135-99-3.
5. Cojocaru Radion, Cazacicov Andrei. Illegal Paramilitary Formation as a Form of Manifestation of Organized Crime. In: Scientific Annals of the "Ștefan cel Mare" Academy of the Ministry of Internal Affairs of the Republic of Moldova, No. 1(19), 2019, pp.62-71.
6. Global Initiative against Transnational Organized Crime. Global Organized Crime Index 2025. Geneva: Global Initiative against Transnational Organized Crime, 2025.
7. United Nations Office on Drugs and Crime (UNODC). World Drug Report 2024. Vienna: UNODC, 2024.
8. Williams Phil. The Fifth Wave: Organized Crime in 2040. Geneva: Global Initiative against Transnational Organized Crime, November 2024.
9. Ursu Veaceslav. Organized Crime: Criminological and Criminal-Law Aspects. Doctoral Dissertation in Law. Chișinău, 2003. 165 p.
10. Bîrgău Mihai, Ursu Veaceslav. Organized Crime: Criminological and Criminal-Law Aspects. Monograph. Chișinău: Printing House of the "Ștefan cel Mare" Academy, 2004. 177 p.
11. Sterschi Florena Esther. Transnational Crime: Criminal Sanctioning Framework and Prevention and Counteraction Policies. Doctoral Dissertation in Law. Chișinău, 2015. 181 p.
12. Ciobanu Igor. Transnational Organized Crime and Certain Forms of Manifestation in the Republic of Moldova. Monograph. Chișinău, 2000.
13. TVP World. Ukraine Snuffs out Gangs Smuggling Men out of the Country. 17 April 2025. Available: TVP World article.
14. Wikipedia. Ukrainian Conscription Crisis. Last updated: 25 June 2024. Available: Wikipedia article.
15. Khurshudyan Isabelle, Khudov Kostiantyn. As Mobilization Rules Kick In, Some Ukrainian Men Pay to Flee, Dodging Draft. The Washington Post, 17 July 2024.

16. Balkan Insight. Romanian Border Police Detect Increase in Ukrainians Fleeing the War. 10 May 2024. Available: Balkan Insight article.
17. Mezha. Organizers Run Illegal Border Schemes across Ukraine, Charging up to $12,000". 22 April 2026. Available: Mezha article.
18. The Independent. Border Guards 'Helped Men Dodge Military Draft. 6 May 2025. Available: The Independent article.
19. United Nations Office on Drugs and Crime (UNODC). War Transforming Ukraine's Criminal Landscape, Causing Economic and Social Damage. 18 July 2025. Available: UNODC press release.
20. My Attorney USA. Ukraine Cracking Down on Draft Evasion. 20 November 2025. Available: My Attorney USA PDF.
21. Hall, T., et al. The Geographies of Organized Crime. Seminal work in the field of the economic geography of organized crime.
22. International Monetary Fund (IMF). Republic of Moldova: Selected Issues. IMF eLibrary, February 2022.
23. Civil Forum for Asset Recovery (CiFAR). Moldova: The Billion Dollar Bank Theft. Available: CiFAR article.
24. Arnold, Vincent. Moldova: Consortium of Banks Emergency Liquidity Program – 2014. In: Journal of Financial Crises, Vol. 7, Issue 1 (2025), pp. 340–370. Available: Yale Journal article.
25. Open Dialog Foundation. Moldova's 'Theft of the Century' — Ostensible Investigations or Sincere Lust for Justice? July 2021. Available: Open Dialog Foundation report.
26. Associated Press. A Moldovan Oligarch and Ex-Opposition Leader Gets a 19-Year Sentence in a $1 Billion Bank Fraud Case. 22 April 2026.
27. United Nations Office on Drugs and Crime (UNODC). Reports on the Implementation of the Sustainable Development Goals and CND/CCPCJ Activities, 2024–2025. Available: United Nations SDG implementation platform.

CZU 343.9:004 **DOI: https://doi.org/10.5281/zenodo.20916160**

ONLINE CRIME AGAINST MINORS AND THE RESPONSE OF CRIMINAL POLICY: BETWEEN REACTION AND PREVENTION

Natalia SĂVULESCU,
PhD Candidate,
University of Political and Economic European Studies "Constantin Stere",
Republic of Moldova
ORCID: 0009-0000-0648-3312

Abstract

The accelerated development of digital technologies, coupled with the increasingly easy and early access of minors to the internet, has led to a profound transformation of the social environment in which they interact, learn, and develop. Social media platforms, instant messaging applications, and online games have become spaces frequently visited daily by children and adolescents, offering them various forms of communication and education, while at the same time exposing them to highly complex risks that are often difficult to verify, control, or stop.

In this context, cybercrime directed against minors has experienced an alarming increase, both in terms of frequency and diversity of manifestations. Phenomena such as online sexual exploitation, the distribution of pornographic materials involving minors, cyberbullying, the process of "grooming" (through which an adult gains the trust of a minor for abusive purposes), or digital blackmail (sextortion) seriously affect the physical, psychological, and emotional integrity of victims. These offenses are often facilitated by the relative anonymity provided by the online environment, the lack of adequate supervision, and the low level of digital education among both minors and parents. The intense social consequences deriving from these forms of criminality are not merely individual and generate long-term trauma among victims. Unfortunately, minors are often unaware of the dangers they are exposed to within this wide range of social interaction, becoming, in most cases, victims of online abuse and violence.

Keywords: online crime; minors; online sexual exploitation; grooming; cyberbullying; criminal policy; crime prevention; child protection; digital security.

CRIMINALITATEA ONLINE ÎMPOTRIVA MINORILOR ȘI RĂSPUNSUL POLITICII PENALE: ÎNTRE REACȚIE ȘI PREVENȚIE

Abstract

Dezvoltarea accelerată a tehnologiilor digitale, dublată de accesul tot mai facil și timpuriu al minorilor la internet, a determinat o transformare profundă a mediului social în care aceștia interacționează, învață și se dezvoltă. Platformele de socializare, aplicațiile de mesagerie instant și jocurile online au devenit spații frecventate zilnic de copii și adolescenți, oferindu-le diverse forme de comunicare și educație, dar expunându-i în același timp unor riscuri foarte complexe și de multe ori destul de greu de verificat, controlat sau stopat.

În acest context, criminalitatea informatică îndreptată împotriva minorilor a cunoscut o creștere alarmantă, atât în ceea ce privește frecvența, cât și diversitatea formelor de manifestare. Fenomene precum exploatarea sexuală online, distribuirea de materiale pornografice cu minori, hărțuirea cibernetică (cyberbullying), procesul de „grooming" (prin care un adult câștigă încrederea unui minor în scopuri abuzive) sau șantajul digital (sextortion) afectează grav integritatea fizică, psihică și emoțională a victimelor. Aceste infracțiuni sunt adesea facilitate de anonimatul relativ oferit de mediul online, de lipsa unei supravegheri adecvate și de nivelul redus de educație digitală atât în rândul minorilor, cât și al părinților. Consecințele sociale intense care derivă din aceste forme de criminalitate, nu sunt de natura individuală și generează traume de lungă durată în rândul victimelor. Din nefericire, minorii nu conștientizează pericolul la care se expun în fața acestei palete largi de socializare, transformându-se în cea mai mare parte în victime ai abuzului și violenței online.

Cuvinte-cheie: criminalitate online; minori; exploatare sexuală online; grooming; cyberbullying; politică penală; prevenirea criminalității; protecția minorilor; securitate digitală.

Introduction. The accelerated digitalization of contemporary society has produced major changes in the way children and adolescents socialize, learn, and develop. The possibility of accessing the internet almost without restrictions, the frequent use of social media platforms, and constant interaction in the online environment have opened important opportunities for information, communication, and self-expression. At the same time, this virtual framework has also generated increased vulnerabilities, raising the risk that minors may become victims of abusive behaviors. Manifestations such as cyberbullying, grooming, or sextortion reflect modern types of threats specific to a digital space characterized by anonymity, rapid dissemination of information, and the absence of geographical boundaries.

From this perspective, the protection of minors requires increased attention from the state, the justice system, and criminal policy. This does not refer only to the law itself, but also to the way in which the state chooses to counteract this phenomenon, namely the totality of measures, strategies, and decisions applied to eliminate this intrusive issue from everyday life. Therefore, in the current context, in order to protect minors from the wide range of offenses to which they are exposed, a continuous adaptation of the traditional instruments of state intervention is necessary.

Methods and materials applied. Currently, the response of criminal policy lies at the intersection between repressive intervention, through sanctions, and preventive methods, which include education, parental responsibility, and the establishment by law of obligations for social networks (Facebook, Instagram, TikTok, etc.), so that they prevent and combat illegal content, especially when minors are involved. In other words, this implies a rethinking of how certain types of content are delivered across these social media platforms. For example, starting in December 2025, Australia became the first country to ban the use of social media by minors under the age of 16, a measure supporting the European Union's efforts to protect young users online. Moreover, Spain's Prime Minister, Pedro Sánchez, stated: "Social media has become a failed state. If we want to protect our children, there is only one thing we must do: take back control." Sánchez used this metaphor to describe the online environment, arguing that digital platforms often function as lawless territories where misinformation prevails over truth and hate speech is tolerated.

Therefore, these measures are adopted precisely due to the risks children face when exposed to content inappropriate for their mental development. Platform owners will be held accountable for the content; in other words, in the case of manipulative or illegal content, they will be required to remove it, and if they fail to do so, the state or the European Union may take action against them.

Studies demonstrate that the level of hate, violence, and illegal content imposed on children—content that children do not choose, but which adults choose to provide—has reached such an extent that extreme solutions must be considered. This issue has become a major concern, with countries such as Spain approving the Digital Services Act within the European Union precisely to address it. Therefore, the European Commission must take measures against toxic algorithms, hate, and violence, with the ultimate goal of protecting children.In Romania as well, representatives of the National Students' Council support regulating access to social networks. However, expert opinions regarding banning or limiting access for minors under 16 are divided between the need to protect mental health and the technical difficulty of implementation.

Experts from "Save the Children Romania" warn that over 22% of Romanian children aged 11-15 show symptoms of psychological withdrawal when access to devices is interrupted. The organization recommends a complete ban under the age of 13 and strict measures for adolescents. Psychologists also emphasize that the online environment has become unsafe, exposing children to bullying, misinformation, and inappropriate content. However, there are also opponents of such measures who argue that a total ban is difficult to enforce, as children will find ways to bypass restrictions. At the same time, experts from Europuls highlight that such a ban could create a dangerous "glass globe" effect and that developing responsible digital behavior is a more sustainable solution.

Certainly, at present, no social media platform is a safe environment for a child aged 8-16 for three main reasons. First, there is the high exposure to harmful content; the algorithms that shape the delivered information are designed to keep users engaged as long as possible, not to protect their mental health. A child does not have fully developed self-control, just as adults sometimes lack it. Second, a major risk is the exploitation of personal data; platforms collect personal data extensively, and children automatically become easy targets for media violence, with a real risk of developing aggressive behavioral patterns in the long term. Third, there are cybersecurity risks, as children are easy targets for phishing, scams, online grooming, sextortion, identity theft, doxxing, and cyberstalking. Increasingly frequent are cases where attackers exploit the lack of digital maturity.

Discussions and results obtained. **I. Exposure to Harmful Content and the Impact of Algorithms**. The first major risk is the constant exposure to age-inappropriate content. Social media platforms operate based on algorithms that prioritize content capable of keeping users engaged for as long as possible. The main purpose of these mechanisms is not to protect mental health, but to maximize time spent on the platform and, consequently, advertising revenue.In the case of children, this logic becomes problematic. Minors do not have fully developed self-control or the critical capacity necessary to filter the information they receive. Algorithms can amplify:

- Violent or sexualized content;
- Dangerous challenges;
- Unrealistic beauty standards;
- Hate speech;
- Misinformation.

Over time, repeated exposure to such materials can influence a child's emotional and behavioral development. In addition, reward mechanisms (likes, views, shares) stimulate digital addiction, affecting concentration and emotional balance.

II. Exploitation of Personal Data and Media Violence. The second major risk is related to the massive collection of personal data. Platforms such as TikTok, Instagram, Facebook, and YouTube operate based on the data economy. They collect information such as search history, content preferences, viewing duration, approximate location, and interactions with other users. In the case of children, the problem is even more serious, as they do not fully understand the consequences of sharing personal data. As a result, detailed behavioral profiles are created, which can influence the type of advertising displayed, the recommended content, and the way in which the child is commercially targeted.In the long term, such profiling can contribute to the formation of "information bubbles" and to shaping preferences before the minor has the ability to make autonomous and informed decisions. Thus, children become vulnerable targets for aggressive commercial strategies or informational manipulation.Moreover, media violence refers to the representation or promotion of acts of physical, psychological, or sexual aggression with-

in various media products, such as films, video games, social networks, news, or other digital platforms.This constant exposure can have significant effects on the development of minors. Firstly, repeated contact with such content may contribute to the normalization of aggressive behavior, with minors beginning to perceive violence as an acceptable reaction in certain situations. Additionally, frequent consumption of violent content may lead to a decrease in sensitivity toward the suffering of others, a phenomenon known in the specialized literature as desensitization.

Many researchers argue that there is an inseparable link between criminality and media violence. For example, according to Judith Lazăr, a French scholar known for her studies on mass media, communication, and the influence of media on society, "the link between criminality and media violence operates through socialization mechanisms, as mass media gradually and progressively gains ground over other agents of socialization, acting simultaneously and over the long term on the cognitive, affective, and behavioral levels" [1, p.182].

"In fact, the danger lies precisely in the long-term effect of audiovisual media, which reflects a symbolic, fictitious, and opulent world that strongly contrasts with the 'real world' and everyday reality. This 'discrepancy' can act as a powerful source of frustration for children and individuals with psychosocial difficulties—vulnerable groups who are unable to distinguish between the real and the symbolic world" [2, p.53].

III. Cybersecurity Risks. The third pillar of risk is vulnerability to cybercrime. The lack of digital maturity and excessive trust in the online environment turn minors into easy targets for attackers.

Phishing is a method of fraud through which attackers attempt to obtain sensitive data (passwords, banking details, authentication codes) through messages that appear legitimate. For example, a message that seems to come from a social media platform or a fake prize offer in an online game. The child is redirected to a fake website where they enter their data, which is later used to compromise accounts or commit financial fraud.

Scams (online frauds) are deceptive schemes through which offenders obtain money or information through manipulation. In the case of minors, the most common include fictitious sales of in-game items, fake accounts promising popularity or followers, or individuals posing as influencers or company representatives. Children, attracted by quick rewards or social validation, may become victims without realizing the risk.

Online grooming represents the process by which an adult gradually gains the trust of a minor for the purpose of sexual exploitation. This process generally includes several stages:

1. Initiating contact (through online games or social networks);
2. Building a relationship of trust;
3. Isolating the child from parents or friends;
4. Requesting intimate images or proposing a meeting.

The major danger lies in the fact that the minor perceives the aggressor as a "friend", which reduces their ability to protect themselves.

Sextortion is a form of sexual blackmail. After obtaining intimate images (through manipulation or hacking), the aggressor threatens to publish them unless they receive money or additional compromising material. For a minor, the psychological pressure can be devastating, leading to severe anxiety, constant fear, isolation, and depression. In many cases, the victim does not seek help out of shame or fear.

Identity theft involves the use of a minor's personal data to create fake accounts or commit fraud. Children frequently share photos, the name of their school, their date of

birth, and their location. This information can be used to build fake profiles or manipulate others.

Doxxing and cyberstalking: Doxxing involves publishing a child's personal data (address, phone number, school) without consent, while cyberstalking refers to repeated online monitoring and harassment. Both forms can create a deep sense of insecurity and fear.

The three dimensions—harmful content, data exploitation, and security risks—demonstrate that the social media environment, in its current form, is not adapted to the developmental level of children aged 8 to 16. Algorithms are designed to maximize engagement, not psychological protection. Massive data collection turns minors into subjects of commercial profiling, while their emotional and cognitive vulnerability makes them ideal targets for cybercriminals. Given the diversity and complexity of offenses committed against minors in the online environment—such as phishing, scams, grooming, sextortion, identity theft, doxxing, or cyberstalking—it becomes imperative to adapt Romanian legislation and criminal policy.

At present, many of these acts are not specifically criminalized, being classified under general categories of offenses (harassment, blackmail, fraud), which limits the effectiveness of law enforcement. Consequently, it is necessary for the state, on the one hand, to ensure a clear and detailed criminalization of each form of online crime, so that there is legal certainty regarding acts considered illegal, and on the other hand, to establish clearly defined and proportionate penalties that reflect the seriousness of the acts and the vulnerability of minors. Furthermore, national legislation must be aligned with European and international standards in order to allow coherent application and effective cooperation with international bodies such as Europol and INTERPOL. In addition to the forms of online exploitation of minors mentioned above, it is important to recognize that the digital environment can, in certain contexts, transform minors from victims into perpetrators of unlawful acts. Juvenile delinquency in the online environment manifests through behaviors such as cyberbullying, the distribution of intimate images of other minors, or even digital blackmail. This intersection between the status of victim and perpetrator highlights the need for a criminal policy that combines rapid response with preventive measures, digital education, and appropriate supervision. In this regard, prevention strategies aim not only to protect minors from offenders, but also to reduce the risk of them becoming involved in illegal activities themselves.

As *a conclusion* to the data presented above, it can be stated that criminal law alone cannot protect minors in the online environment. There is a need for global harmonization and an integrated policy, meaning a coherent and unified approach to this issue. Therefore, in order to combat this pervasive phenomenon, action must be taken on several levels:

• From a legal and criminal perspective: clear criminalization of each form of online offense (grooming, phishing, sextortion, etc.), well-proportioned and promptly applicable penalties, and judicial procedures adapted to the digital environment;

• From a preventive and educational perspective: digital education in schools and within families, awareness campaigns for children, parents, and teachers, and training minors to recognize online dangers and report incidents;

• From a technological and platform regulation perspective: obligations for social networks to filter and remove harmful content, data protection and control over aggressive profiling of minors, rapid reporting and intervention systems, and strict measures regarding the delivery of inappropriate or harmful content.

In conclusion, with in criminal policy, the implementation of corrective or restorative justice requires, in addition to action on all the aspects mentioned above, the involvement of specialized state institutions, namely competent judicial bodies in civil and criminal matters. Their role is to ensure the application of legal norms and to contribute to restoring the balance between citizens' rights and obligations, a balance disrupted by acts contrary to the rule of law. In this context, alongside general mechanisms of social control, the essential role of criminal law and the criminal justice system becomes evident. These represent institutionalized instruments through which the state formulates and applies a specific legal response to criminal behavior or situations that present the appearance of an offense. Through the functioning of these mechanisms, one of the fundamental objectives of criminal policy is achieved, namely the prevention and control of criminality. According to "extensive" or comprehensive approaches, combating criminality in general, including through criminal sanctions, acquires preventive connotations.

Regarding typologies of prevention, specialized literature identifies, based on the definition, usefulness, and nature of preventive activities, the following types:

• *Prevention of juvenile delinquency* is characterized by individual educational measures and represents a specific field of social sectoral policies—anti-crime policies—involving aspects related to education, health, living conditions, social assistance services, public authorities, and non-governmental organizations;

• *General crime prevention* aims at inhibiting unlawful behavior through the threat of punishment;

• *General (indirect) prevention* targets macro-social factors influencing criminal behavior;

• *Primary prevention* focuses on modifying criminogenic factors and conditions in the global physical and social environment;

• *Secondary prevention* targets groups at higher risk of engaging in antisocial or illegal acts;

• *Tertiary prevention* involves preventing recidivism and supporting the social reintegration of individuals who have committed offenses;

• *Social prevention* aims to identify and address the factors of criminality through complex programs;

• *Situational prevention* focuses on supervising and shaping the immediate environment in order to eliminate pre-delinquent situations.

In addition to this classification, specialized literature also promotes another operational classification, reflected in current European practices, which emphasizes public involvement in the implementation of criminal policies. Thus, Recommendation No. R (83) 7 of the Council of Europe regarding public participation in criminal policy highlights that social prevention should focus on:

• Providing proper information to parents regarding the causes, symptoms, and prevention of juvenile delinquency;

• Adequate training of teaching staff to address adaptation problems;

• Ensuring the professional integration/reintegration of young people, especially those with deviant behavior;

• Involving community associations in local and urban development to improve quality of life and reduce criminogenic factors.

Child protection in the digital era requires a rethinking of traditional criminal policy. Although criminal law remains indispensable, its effectiveness is limited in the absence of preventive mechanisms. Prevention becomes the essential condition for effective protec-

tion through digital education, parental responsibility, platform regulation, and international cooperation.

An optimal model combines:

- Preventive measures that reduce the risk of victimization;
- Proportionate sanctions for serious offenses;
- Monitoring and accountability of the digital environment;
- A balance between child protection and respect for fundamental rights.

Only an integrated approach, combining prevention with proportionate repressive measures, can ensure real, sustainable, and effective protection of minors in the contemporary digital space.

Joseph Savirimuthu, in the article "*The EU, Online Child Safety and the Role of Media Literacy*", published in the International Journal of Children's Rights (2011), stated that "media education continues to play an important role in the governance of children's online safety in the European Union" [4].

The Organisation for Economic Co-operation and Development (OECD), analyzing children's safety and well-being in the digital environment, states: "Children are online more than ever [...] While there are real and important opportunities, increased time spent online may also increase exposure to digital risks. Many of these are online versions of known offline risks (bullying, racism, fraud, and sexual predation). Children must be provided with the (digital) skills and tools necessary to recognize and manage these risks, without unjustifiably limiting their online opportunities" [6].

Anya Kamenetz, an American journalist, states in her book "*The Art of Screen Time*" that "children need not only limits on technology use, but also active guidance from parents to learn how to navigate safely in the digital environment" [7].

Andy Crouch, American author and commentator, argues in "*The Tech-Wise Family*" that "in a world dominated by screens, the responsibility of adults is to create an environment in which children are protected, but also formed to use technology with discernment" [9].

Diana Graber, American educator and promoter of digital literacy, states in her book "*Raising Humans in a Digital World*" that "digital education is not only about protecting children from online dangers, but also about preparing them to make responsible and ethical decisions in the virtual environment" [8].

Bibliographical references

1. Judith Lazăr. Television – At the Origin of Youth Violence? In: Gilles Ferreol, Adrian Neculau (eds.), Violence. Psychosocial Aspects, Iași: Polirom, 2003.
2. Maria Sandu. Social Reaction Against Criminality, pp.53, 60-61, 61-62.
3. George Neamțu. Typologies of Preventive Actions. 1998, pp.104-108.
4. Joseph Savirimuthu. The EU, Online Child Safety and the Role of Media Literacy. p.547.
5. ECAPT (European Child Abduction Prevention and Protection). Live Streaming of Child Sexual Abuse in Real-Time. Available: http://www.ecapt.org/wpcontent/uploads/1egacy/SECO%20Manifestations_Live%20streaming%20of%20child%20sexual%20abuse%20in%20real-time_0.pdf.
6. OECD, Educating 21st Century Children: Emotional Well-Being in the Digital Age, 2019, chapter "Childhood in the Digital Age", pp.17-18.
7. Anya Kamenetz. The Art of Screen Time. p.156.
8. Diana Graber. Raising Humans in a Digital World. p.92.
9. Andy Crouch. The Tech-Wise Family. p.178.

CZU 343.91/.94 **DOI: https://doi.org/10.5281/zenodo.20916376**

THE CRIMINOLOGICAL PROFILE OF THE SCAMMERS: BETWEEN THEORETICAL CONSTRUCTION AND JUDICIAL REALITY

Natalia DONICA,
PhD Student,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Principal Consultant,
Section for Lawyers, Mediators and Judicial Experts,
Directorate for Legal Professions and Services, Ministry of Justice,
Republic of Moldova
ORCID: 0009-0001-0567-8764

Abstract

This article proposes a criminological analysis of the personality of the scammers, structured into three complementary levels: conceptual-theoretical, psychological, and empirical. In the first part, the concept of the offender's personality is examined through the lens of the main criminological perspectives: biological, psychological, and sociological. It demonstrates that the offender's personality constitutes a dynamic bio-psycho-social system, formed through the socialization process, which cannot be reduced to a single causal variable.

In the second part, the defining psychological traits of the fraudster are analyzed through the Dark Triad model (narcissism, Machiavellianism, and subclinical psychopathy). Their interaction generates a personality structure oriented toward the systematic manipulation of victims, the exploitation of their vulnerabilities, and the rationalization of criminal conduct as a legitimate act of intellectual superiority. The fraudster's motivation is predominantly instrumental, organized around greed, the need for prestige, and the playful element of manipulation inherent in scamming.

This theoretical construction is empirically validated through the analysis of a corpus of 50 court rulings issued by the courts of the Republic of Moldova between 2024 and 2025, in fraud cases pursuant to Article 190 of the Criminal Code. The article emphasizes the need for a multidimensional preventive approach that integrates legal and digital education for the population, alongside a penal policy oriented toward understanding the psychological mechanisms of fraudulent behavior.

***Keywords:** criminal personality, scamming, criminological profile, determining factor, fraudulent behavior, empirical analysis, criminological indicator.*

PROFILUL CRIMINOLOGIC AL ESCROCULUI: ÎNTRE CONSTRUCȚIE TEORETICĂ ȘI REALITATE JUDICIARĂ

Abstract

Articolul propune o analiză criminologică a personalității escrocului, structurată pe trei niveluri complementare: conceptual-teoretic, psihologic și empiric. În prima parte, este examinat conceptul de personalitate a infractorului din perspectiva principalelor orientări criminologice: biologică, psihologică și sociologică, demonstrându-se că personalitatea infractorului constituie un sistem bio-psiho-social dinamic, format în cadrul procesului de socializare și imposibil de redus la o singură variabilă cauzală.

În partea a doua, sunt analizate trăsăturile psihologice definitorii ale escrocului prin prisma modelului Triadei Întunecate (narcisism, machiavellism și psihopatie subclinică), care, în interacțiunea lor, generează o structură de personalitate orientată spre manipularea sistematică a victimelor, exploatarea vulnerabilităților acestora și raționalizarea conduitei infracționale ca act legitim de superioritate intelectuală. Motivația escrocului este preponderent instrumentală, organizată în jurul cupidității, nevoii de prestigiu și elementului ludic al manipulării.

Construcția teoretică este validată empiric prin analiza unui corpus de 50 de hotărâri judecătorești pronunțate de instanțele din Republica Moldova în perioada 2024-2025, în cauze de escrocherie conform art. 190 Cod penal. Articolului subliniază necesitatea unei abordări preventive multidimensionale, care să integreze educația juridică și digitală a populației, alături de o politică penală orientată spre înțelegerea mecanismelor psihologice ale comportamentului fraudulos.

Cuvinte cheie: personalitatea infractorului, escrocherie, profil criminologic, factor determinant, comportamentul fraudulos, analiză empirică, indicator criminologic.

Introduction. Within contemporary criminology, the analysis of the criminal personality transcends the scope of mere statistical description, aiming to understand the mechanisms governing deviant behavior and criminality as a complex social phenomenon. This approach seeks not only to clarify determining factors and causal relationships but also to formulate the scientific pillars necessary for the individualization of sentences [8] and the optimization of crime prevention strategies.

Personality does not merely represent the context in which criminal interest arises; it directly shapes the modus operandi. In cases of scam, personality traits dictate the selection of the victim, the complexity of the scenario, and the persistence in criminal conduct. Thus, the author's personality traits transform criminal opportunity into a lifestyle in which social skills and interpersonal interaction are directed toward manipulation, while the absence of compassion and empathy facilitates the act of depriving victims of their assets.

The concept of the criminal personality remains a conventional one. Although there are no psychophysical traits that belong exclusively to those who break the law, the identification of behavioral constants allows for the study of the offender as a distinct social and psychological type. This analysis is essential for understanding how the interaction between individual values, biological variables, and the social environment generates the criminal act.

It is recognized that criminal law is variable in space and time; there are no *sui generis* crimes *per se*. Criminological research demonstrates that no personality qualities can be isolated as belonging only to the offender, as the way in which social, psychological, and biological factors combine within an individual's character structure determines the degree of social dangerousness and the form of manifestation of adverse social behavior. Consequently, the study of personality becomes the key to understanding why, under identical social conditions, one individual chooses social conformity, while another resorts to fraudulent actions to obtain illicit gains.

Methods and materials applied. The research is based on a mixed methodology, combining a theoretical analysis of specialized literature with an empirical study of national judicial case law, consisting of a set of 50 court rulings issued by the courts of the Republic of Moldova between 2024 and 2025 in fraud cases pursuant to Article 190 of the Criminal Code of the Republic of Moldova.

The methods applied include the analysis and synthesis of specialized literature, the historical method for reconstructing the evolution of the concept of the criminal personality, the comparative method for correlating theoretical models with national judicial reality, as well as quantitative and qualitative methods for extracting, systematizing, and criminologically interpreting the indicators derived from the analyzed court rulings.

Discussion and results obtained. **I. The Criminal Personality: Concept and Theories.** Personality is the social quality of the individual, formed within social interaction (the socialization process). Personality is not a biological given but a result of socialization,

being the reflection of society upon the person's psyche. A human is born as an individual and only over time becomes a personality under the influence of socialization institutions [17, p.233]. The individual exerts and confirms their personality through activity, which transforms biological potential into character traits and aptitudes.

The study of personality represents the cornerstone for fundamental disciplines such as psychology and sociology, holding major relevance in the criminological analysis of criminals and their *modus operandi*. According to Alfred Adler's vision, the individual is the architect of their own self, shaping their personality through a freely chosen lifestyle which, once fixed, becomes the central pillar of all their behaviors. This perspective is complemented by Erich Fromm, who argues that personality is a set of psychological qualities through which humans actively shape both their own course of life and the culture in which they live.

The evolution of this concept also implies an orientation of the personality from the past toward the present and future. Gordon Allport defines personality as a system in which adult motives become autonomous and independent of childhood orientations, emphasizing the intentional character of decisions and actions. In addition, Raymond Cattell defines personality through traits modeled as a relatively permanent response to social conditions, while Karen Horney emphasizes the security of the person, starting from every human's need to control anxiety and feel protected.

In the view of these authors, personality is constituted as an autonomous system of traits and motives, actively created by the individual through the interpretation of their own experience. It is not a construct determined by instincts, but represents a conscious lifestyle that utilizes social and cognitive forces, which form the individual's subjective reality.

Personality represents the integration mechanism through which a biological individual is transformed into a social actor. It constitutes the unique synthesis of experiences acquired within the community, which each person processes and converts into their own system of beliefs. When this system of beliefs and conduct enters into conflict with the fundamental norms of society, the individual's personality becomes the object of study for criminal law, moving from the purely psychosocial sphere into that of legal liability.

In this sense, the Criminal Code of the Republic of Moldova, in Article 14, defines a crime as "a prejudicial act, provided for by criminal law, committed with guilt and punishable by criminal law". The subject of this act, the criminal, is defined through the prism of responsibility and maturity, being the physical person who possesses discernment and has reached the age threshold established by law for criminal liability [1]. The correlative analysis between the legal definition of the crime and the psychosocial notion of the offender reveals the link between the norm and the individual. The crime is the act, while the criminal is the bearer of the traits that make that act possible.

A crime represents the external manifestation, in the form of a prejudicial and intentional act, of antisocial behavior. However, it does not appear in isolation but as a result of the interaction between the criminogenic characteristics of the personality and situational factors. Personality acts as a filter for external influences, such that internal traits may remain latent or materialize into criminal behavior, depending on the specific circumstances of the environment [15, p.17].

From a criminological perspective, the criminal personality is a synthesis of biological, psychological, social, and cultural traits with a high degree of stability, defining the individual who has committed a crime [9, p.35]. This is distinguished from the personal-

ity of other citizens by its antisocial orientation and the social danger it represents. The concept has a relative character and is strictly determined in time, from the moment the crime is committed until the sentence is served [10].

In criminology, the *criminal personality* is analyzed through three classic perspectives:

- *Biological*: Physical, genetic, and constitutional characteristics, including pathological traits, outline a distinct type of human behavior. The biological and bio-anthropological orientation was explored by Cesare Lombroso, who promoted the theory of the "born criminal"; by Ernst Kretschmer, who highlighted the correlation between body structure and temperament; and by Olof Kinberg, who considered that an individual might become a delinquent if their biopsychic structure does not allow them to adapt to environmental stimuli;
- *Psychological*: This approach analyzes mental processes, internal conflicts, and character traits. It includes the "Central Core" theory (Jean Pinatel), which identifies egocentrism, lability, aggressiveness, and affective indifference as traits that can trigger criminal acts [11]; the theory of conditioning and traits (Hans Eysenck), which explains the criminal personality through the interaction of neuroticism, extraversion, and psychoticism; the psychoanalytic perspective (Sigmund Freud), which views criminality as a result of the imbalance between the Id, Ego, and Superego; and the inferiority complex theory (Alfred Adler), according to which feelings of inferiority can generate antisocial acts as a form of compensation;
- *Sociological*: This approach highlights the determining role of the socio-cultural context in the formation of criminal behavior. The differential association theory (Edwin Sutherland) argues that criminality is not inherited but learned within close groups, through the transmission of both techniques and justifications for the act. Risk factors are multidimensional, as the criminal personality can be shaped by socialization deficiencies in childhood, disorganized families, physical abuse, school failure, and the influence of deviant peers.

Thus, the criminal personality represents a bio-psycho-social system formed as a result of one's existence, being an individual form of negative social relations [5, p.141]. Approaching the personality from an axiological perspective allows us to view the individual through the conceptual triad proposed by Petre Andrei:

- *Homo Faber* – the pragmatic dimension of the individual, oriented toward transforming the environment. In a criminal context, this creative energy is diverted, with the capacity for action being channeled toward achieving illicit or destructive goals;
- *Homo Sapiens* – the rational and cognitive subject. The alteration of reality perception processes through self-justification mechanisms generates errors in judgment that underpin the decision to violate legal norms;
- *Homo Valens* – the human as a being capable of conceiving, possessing, and applying a system of values and ethical landmarks. The degradation or absence of this value system eliminates internal moral barriers, allowing antisocial impulses to manifest without censure [12, p.140].

The evolution of these theories marks the transition from a rigid and deterministic vision, which considered the criminal to be conditioned exclusively by their biology, to a multidimensional approach. Today, the criminal personality is perceived as a dynamic system in which the interaction of genetic factors, psychological traumas, and socialization deficiencies creates a unique response to the pressures of the social environment.

Each individual constitutes a totality, and their integrity manifests through specific

individual bio-psycho-socio-cultural forms as well as social qualities [4, p.147]. This allows us to perceive personality as an ensemble of interconnected components and to understand how they interact with each other and with the whole [15, p.77]. The personality of each individual is the product not only of existing social relations but also of their own development and self-perception. Therefore, reducing the criminal personality solely to sociological or psychological aspects is inadmissible, and criminological study must be based on the unity of biological, social, and psychological factors in their interaction.

This integrative perspective on personality can be applied to study the specifics of different criminal typologies. Character traits do not appear chaotically but unite into configurations adapted to the pursued goal. No other category of criminals shows more clearly how humans build their own personality than scammers. In their case, internal traits and external influences blend in a subtle way for the manipulation and exploitation of victims' trust, a core element of fraud and scamming.

II. Criminological Profile of the Fraudster. The analysis of the **s**cammer's psychological profile is linked to the general theory of the criminal personality. Considered a particular form of delinquency, scam cannot be explained by a single causal variable; rather, it derives from the dynamic interaction between the individual's psychic peculiarities, motivational determinants, and environmental factors that facilitate the materialization of the criminal act.

The behavior of the scammers is not a chaotic act but is governed by an internal logic, being perceived by the perpetrator as a subjectively opportune action grounded in intrinsic motivation. In this context, motives do not function merely as simple impulse factors but represent the very finality of the action, giving an internal meaning to the criminal endeavor for the active subject [15, p.29].

Contemporary research in criminological psychology has identified a distinct personality profile associated with those who engage in scam, described as the "Dark Triad" [13], which comprises three types of offensive, yet non-pathological, personality traits: Machiavellianism, narcissism, and subclinical psychopathy. All three involve, to varying degrees, an antisocial character with behavioral tendencies toward self-promotion, emotional coldness, duplicity (a "two-faced" person), and aggression.

Narcissism constitutes a fundamental component of the scammer's personality. Narcissistic traits involve a sense of entitlement, superiority, grandiosity, and dominance. Narcissism can motivate an individual to act unethically for their own benefit and can alter perceptions regarding their own capabilities, fueling the belief that they can successfully commit scams [14]. From this perspective, the scammer does not perceive deception as a transgression, but as a confirmation of their superiority over their victims.

Machiavellianism represents the most defining trait for the scammer typology. Machiavellian traits involve manipulation to achieve one's own goals, a lack of morality, an absence of empathy, and cynicism. This term is suitable for professional scammers because they act deliberately and strategically to exploit the vulnerabilities of their victims; they believe that interpersonal manipulation is the key to success in obtaining profits that are not rightfully theirs.

Subclinical psychopathy reflects a dangerous symbiosis of criminal thinking and behavioral traits, refined through a sense of entitlement, an inclination toward deception and manipulation, a lack of empathy and remorse, and the perspective that other individuals are mere resources to be exploited for the satisfaction of personal needs.

An analytical synthesis of these three components reveals that, although they partially overlap, each contributes differently to scamming behavior: psychopathy provides

cold detachment, Machiavellianism ensures the capacity for long-term planning and strategic manipulation, while narcissism fuels the sense of self-grandiosity.

However, the motivational content of scamming cannot be reduced to isolated psychological phenomena, such as material need or immediate interests, although these play an essential role in the process of activating conduct. Interest derives directly from necessity, as interest acts as a mediator between the state of necessity and the criminal decision, dictating the direction and intensity of the efforts made by the scammer in achieving their goals [7, p.42].

The scammer's motivation is predominantly instrumental and is organized around well-defined psychological vectors. Scamming behavior is explained through the Fraud Triangle model, which identifies three determining forces: motivation (pressure), opportunity, and rationalization. Most criminals reach the decision to commit a crime with very little prior reflection, without truly evaluating the consequences. However, the applicability of this model varies significantly depending on the criminal profile.

While for occasional criminals, the decision to commit a crime often occurs with minimal prior reflection and a superficial evaluation of consequences, for professional scammers – especially those operating within organized groups – spontaneity is practically absent. In these cases, the scamming conduct is the result of detailed, elaborate scenarios strategically targeted at specific victims.

The etiological analysis of scamming reveals that greed, the need of prestige, and the playful component are not mere occasional motives, but constitute the core traits of the scammer's personality. Unlike other categories of criminals, in the case of scammers, these dimensions intertwine to generate a complex psychic mechanism:

1. Greed acts as the primary engine, transforming the desire for profit into an imperative that justifies any form of deception.

2. The need for prestige fuels the fundamental psychological mechanism through which the criminal succeeds in inducing and maintaining the victim in error. The scammer requires the appearance of success to become credible to their victims.

3. The playful element explains the self-confidence and pleasure felt during the manipulation process, transforming the fraud scenario from a simple illicit act into a demonstration of intellectual superiority over the victim.

In the architecture of the scammer's personality, greed, the need for prestige, and the playful dimension do not function as isolated elements but complement each other in a structural symbiosis, being intrinsically present in the totality of their illicit actions [16, p. 90]. If greed establishes the material objective, prestige provides the tools necessary to build a credible facade through duplicity, while the playful element fuels the execution mechanism through the pleasure of manipulation and the underestimation of risk. This motivational triad transforms scamming from a simple result-oriented offense into a complex manifestation of the criminal psychotype, where success is validated not only by the profit obtained but also by the projected social recognition and the intellectual satisfaction of the control exercised over the victim.

III. Empirical Analysis Based on National Judicial Case Law. The analysis is based on 50 court rulings issued between 2024-2025 in cases of aggravated fraud pursuant to Article 190 of the Criminal Code of the Republic of Moldova [2]. This mixed approach allows for the validation, highlighting, or, where appropriate, the correction of theoretical models using data from the national judicial system. The quantitative data extracted from the sentences are treated not as an end in themselves, but as indicators of deeper psychological realities.

The first dimension of the analysis targets the socio-demographic characteristics of the defendants, as "the criminal personality cannot be understood outside the social context in which it was formed and in which it acts" [4, p.152].

	Analyzed indicator	Absolute value	Rate
1	Male	**38**	**76%**
2	Female	**12**	**24%**
3	Secondary education	**34**	**68%**
4	Higher education	**10**	**20%**
5	No education	**6**	**12%**
6	Unemployed	**43**	**86%**
7	Employed	**7**	**14%**
8	Unmarried	**28**	**56%**
9	Married	**16**	**32%**
10	Divorced	**6**	**12%**
11	With dependent children	**15**	**30%**
12	Without dependent children	**35**	**70%**
13	With prior criminal record	**20**	**40%**
14	Without prior criminal record	**30**	**60%**

Table 1. Socio-demographic profile indicators of defendants in scam cases (2024-2025)

The gender distribution of the 50 analyzed defendants reveals a male predominance of 76% (38 men compared to 12 women). The female presence is characteristic of the scamming typology, which primarily involves relational, communicative, and affective manipulation means; women are frequently involved in schemes based on direct emotional manipulation (such as the "relative involved in an accident" scheme) or fictitious trade schemes through proximity relationships which, naturally, generate a certain degree of presumed trust.

The distribution by education level indicates that 68% of the defendants have secondary education, 20% have higher education, and 12% hold no formal qualifications. The analysis shows that defendants with higher education resort to more sophisticated deception schemes, such as complex contractual scams, abuse of administrative office, or manipulation within currency exchange schemes. In contrast, defendants with secondary or incomplete education utilize more standardized but no less effective schemes, such as fictitious online sales, job promises, or street scams. Therefore, the determining factor is not the level of education, but the degree of social intelligence.

The most revealing socio-demographic indicator from a criminological perspective is occupational status. Over 75% of the defendants did not have an official job at the time the acts were committed, which far exceeds the unemployment rate in the population of the Republic of Moldova (approximately 4 during the analyzed period) [3] and cannot be explained exclusively by economic factors. Specifically, scamming is chosen by these individuals not as a solution to poverty, but as a faster and easier alternative to obtaining

gain, rejecting work as a social norm. In other words, these defendants were not unemployed because they could not find work, but because scamming offered them a faster and less demanding gain than labor. This hypothesis is further supported by the fact that 40% of the defendants had prior criminal records for similar acts, proving the persistence of this conduct model and the unwillingness to manifest socially accepted behavior.

Data regarding marital status confirms the profile of an individual with low social attachment: 56% of the defendants are unmarried, 32% are married, and 12% are divorced. Correlated with the indicator regarding dependent children – 70% of the defendants have no parental responsibilities – there emerges the profile of an individual with high social mobility and a clear indifference toward criminal risks. The analyzed data confirms that the absence of family obligations among the defendants is associated with a high number of illicit acts and recidivism.

40% of the defendants had prior criminal records at the time the court's decision was rendered. This indicator demonstrates that the criminal penalty did not exert the intended behavioral rehabilitation function, with defendants returning to the same illicit activities after serving their sentences. From the perspective of the Dark Triad, this persistence reflects an overestimation of one's own abilities to avoid punishment (narcissism), the belief that the system can be circumvented (Machiavellianism), and the absence of moral values and fear of consequences (psychopathy).

	Analyzed indicator	Absolute value	Rate
1	Sole perpetrator	**43**	**86%**
2	Group of 2 or more perpetrators	**7**	**14%**
3	Single criminal episode	**21**	**42%**
4	2–10 criminal episodes	**16**	**32%**
5	Serial, over 20 episodes	**13**	**26%**
6	Single victim per case	**31**	**62%**
7	2–5 victims per case	**14**	**28%**
8	Over 10 victims per case	**5**	**10%**
9	Victim and perpetrator unknown to each other	**34**	**68%**
10	Victim and perpetrator known to each other	**16**	**32%**

Table 2. Structure of the criminal action in scam cases (2024-2025)

The analysis of participation shows that 86% of the cases involve a sole perpetrator, compared to only 14% involving a group of two or more defendants. This proportion reflects that a scammer with a narcissistic and Machiavellian profile manifests a low tolerance for sharing control and profits with other participants, as the manipulation of the victim is perceived as an act of personal superiority.

The 7 cases involving a plurality of perpetrators invariably present more complex schemes where the division of roles is a necessity. For example, in the "relative involved in an accident" scheme, the scammers' roles were divided: some generated emotional shock via telephone calls, while others physically collected the cash. It should be noted that the damages caused by scammers operating in a group are significantly more substantial than those committed by a sole perpetrator.

Analysis by the number of victims per case highlights that 62% of cases involve a single victim, 28% involve between 2 and 5 victims, and 10% involve more than 10 victims. The distribution of criminal episodes denotes a structural duality in the perpetrator-victim interaction: while 42% of subjects acted occasionally, limiting themselves to a single episode, the remaining 58% manifest a clear tendency toward multiplicity. Among these, 32% recorded between 2 and 10 episodes, and 26% exhibit a serial character, a fact that attests to the transformation of scamming into a stable method of gain and a professionalization of criminal conduct. Criminal seriality implies not only the absence of remorse but also a progressive refinement of manipulation techniques and the permanent polishing and adjustment of the scenario.

	Analyzed indicator	Absolute value	Rate
1	Deception	**50**	**100%**
2	Abuse of trust	**15**	**30%**
3	Use of digital environment	**14**	**28%**
4	Exclusively remote negotiations	**20**	**40%**
5	Fictitious trade / Undelivered services	**16**	**32%**
6	Fictitious employment abroad	**8**	**16%**
7	Loans-credits	**10**	**20%**
8	“Relative involved in an accident” scheme	**6**	**12%**
9	Spontaneous scam	**6**	**12%**
10	Organized fraud / Fictitious investments	**4**	**8%**

Table 3. Psychological mechanism and typology of criminal schemes in scam cases (2024-2025)

The analysis of the 50 court rulings allowed for the identification of five main typologies of criminal schemes, each corresponding to a distinct set of personality traits.

The fictitious trade and undelivered services scheme (the most frequent) relies on the use of digital platforms (999.md, Viber, WhatsApp, Facebook) to sell non-existent goods. This scheme requires digital adaptability and calculated anonymity, as the author does not need to build a lasting relationship of trust, limiting themselves to creating an illusion of credibility sufficient to convince the victim to perform a financial transfer.

The fictitious employment abroad scheme involves a higher level of planning and the gradual building of credibility. This scheme requires patience, organizational capacity, and an ability to maintain a fictitious identity over a long period.

The “relative involved in an accident” scheme illustrates a strategy of exploiting intense emotions in real-time, where the success of the crime depends on the author’s ability to suspend the victim’s critical thinking. This process is facilitated by absolute emotional neutrality and total indifference toward the suffering of others.

Street scamming involves traits of impulsivity through which the author capitalizes on an immediate opportunity without planning, relying on distraction techniques and the exploitation of basic social empathy.

The fact that 100% of the analyzed cases involve inducing and/or maintaining error confirms the nature of scamming as a crime of cognitive and psychological manipulation.

In this context, the author does not resort to coercion but aims to manipulate the victim's decision-making process, causing them to act voluntarily against their own interests.

The abuse of trust through personal relationships scheme (30% of cases) requires the most psychological resources. The author builds and maintains a friendship, kinship, or professional relationship over a long period, simulating affection and loyalty, only to ultimately exploit that exact relationship. The author feels entitled to use the victim's resources for their own benefit.

Thus, the analysis of the 50 court rulings allows for the formulation of an empirical criminological profile of the scammer active within the legal space of the Republic of Moldova. From a socio-demographic perspective, the typical scammer is a man, with secondary education, without a legitimate occupation, single and without children, who acts individually and has a prior criminal record for similar acts in 40% of cases. The absolute dominance of error and the frequency of abuse of trust confirm that scamming is a purely psychological aggression against reason, where the author substitutes physical coercion with calculated duplicity, exploiting the victim's loyalty.

Similarly, the analysis reveals a diversified spectrum of strategies, from the digital anonymity of fictitious trade or the impulsive opportunism of street scams, to the cynicism and psychological cruelty of the "accident" scheme. Each method reflects a distinct profile in which the criminal adjusts their level of planning and emotional involvement to halt the victim's critical thinking and ensure the desired outcome.

Conclusions. The analysis of the scammer's criminological profile, conducted by corroborating theoretical constructs with empirical data extracted from 50 court rulings issued in the Republic of Moldova between 2024-2025, demonstrates that the criminal personality cannot be reduced to a single causal variable. Instead, it represents a dynamic bio-psycho-social system, formed within the process of socialization and shaped by the interaction of genetic, psychological, and environmental factors.

Classical theories have contributed to outlining a multidimensional vision of the criminal personality in which scamming occupies a distinct place. Unlike violent crimes, scamming does not rely on force, but on a specialized psychological structure organized around the Dark Triad (narcissism, Machiavellianism, and subclinical psychopathy), which transforms the cognitive and psychological manipulation of the victim into a source of intellectual and financial satisfaction.

The empirical profile outlined confirms that, in the absence of individualized psychosocial rehabilitation programs, the criminal penalty does not exert the expected preventive function on this category of criminals. They are characterized by a structural resistance to normative consequences. Furthermore, the clear tendency toward the digitalization and diversification of scamming schemes requires a multidimensional preventive approach. This should integrate legal and digital education for the population, the perfection of forensic investigation tools, and a penal policy oriented not only toward sanctioning but also toward a profound understanding of the psychological mechanisms that generate and perpetuate this type of criminal behavior.

Bibliographical references

1. Criminal Code of the Republic of Moldova. In: Official Gazette No.72-74 art. 19 of 14.04.2002, with subsequent amendments.
2. National Portal of Courts. Available: https://instante.justice.md/.
3. National Bureau of Statistics. Available: https://statbank.statistica.md/PxWeb/pxweb/ro/30%20Statistica%20sociala/30%20Statistica%20sociala__03%20

FM__03%20MUN__MUN060/?rxid=b2ff27d7-0b96-43c9-934b-42e1a2a9a774.
4. Gladchi Gh. General Criminolog. Chişinău, 2001. 312 p.
5. Larii Iu. Criminology. Cartea militară, 2020. 290 p.
6. Birgau M., Nastas A. Criminology: Treatise. Chişinău: Pontos, 2022 (Print-Caro), 340 p.
7. Bejan O., Bujor V. Interest and Crim. Chişinău: S. n., 2004 (Tipogr. „Elena-VI"), 187 p.
8. Masgras L. Psychology of the Criminal Act in the Criminal Justice System. Available: https://www.juridice.ro/773351/psihologia-actului-infractional-in-sistemul-de-justitie-penala.html (accessed 03.03.2026).
9. Stanoiu R.M. The Role of Contradictions in the Etiology of Delinquent Behavior. In: S.C.J., No.1, 1987, p.35.
10. Ostrovari P. Contemporary Theories of the Criminal Personality. In: „European Vector" No.2/2020, pp.14-19.
11. Petcu M. Characteristics of the Delinquent Personality. In: „Fiat Iustitia", No.2/2012.
12. Petre A. Philosophy of Value. In: Polirom Publishing House, Iași, 1997, 240 p.
13. Paulhus, D.L., Williams K.M. The Dark Triad of Personality: Narcissism, Machiavellianism, and Psychopathy. In: Journal of Research in Personality, Vol. 36, Issue 6, 2002, pp.556-557. Available: https://www.sciencedirect.com/science/article/abs/pii/S0092656602005056 (accessed 22.01.2026).
14. Amos B., Longpré N., de Roos M. The Dark Triad of Personality: Attitudes and Beliefs Towards White-Collar Crime. In: Journal of White Collar and Corporate Crime, 2022, p.3. Available: https://journals.sagepub.com/doi/10.1177/2631309X221120002 (accessed 17.01.2026).
15. Antonyan Yu.M. Criminology, Selected Lectures. Moscow: "Logos", 2004. 448 p.
16. Antonyan Yu.M., Enikeev M.I., Eminov V.E. Psychology of the Criminal and Crime Investigation. Moscow, 1996. 203 p.
17. Gildinsky Ya.I. Criminology: Theory, History, Empirical Basis, Social Control. 3rd revised and enlarged edition, Saint Petersburg: Alef-Press, 2014. 574 p.

CZU 342.9(478) DOI: https://doi.org/10.5281/zenodo.20916623

DETERMINATION AND APPLICATION OF THE LIMITATION PERIOD FOR CONTRAVENTIONAL LIABILITY IN THE CASE OF OFFENCES PROVIDED FOR IN ARTICLE 179 OF THE CONTRAVENTION CODE OF THE REPUBLIC OF MOLDOVA

Dorel COJOCARI,
PhD Student,
University of European Studies of Moldova
ORCID: 0009-0002-3778-7831

Snejana CIOCHINĂ,
PhD Student,
University of European Studies of Moldova
ORCID: 0000-0002-4838-642X

Abstract

The present study is devoted to the analysis of the legal regime of the special limitation period applicable to contraventional liability in relation to the offences provided for in Article 179 of the Contravention Code of the Republic of Moldova, concerning unauthorized constructions and unauthorized interventions in existing constructions.

The research is based on a systematic interpretation of the relevant contraventional provisions, with emphasis on the particularities that justify the establishment of a special limitation period, distinct from the general rule. In this context, the conditions for the applicability of the special limitation period, the starting point of its running, and the impact of the legal classification of the act on the determination of prescription are examined, especially in cases where the offence may be characterized as continuous.

The analysis reveals practical difficulties arising from normative ambiguities and the lack of uniform interpretative benchmarks, which may affect the predictability of sanctioning. Consequently, the study formulates interpretative guidelines aimed at ensuring a coherent and consistent application of the limitation period in the field of construction-related contraventions.

Keywords: contraventional limitation period, special limitation period, unauthorized constructions, continuous contravention, contraventional liability, legal certainty.

DETERMINAREA ȘI APLICAREA TERMENULUI DE PRESCRIPȚIE A RĂSPUNDERII CONTRAVENȚIONALE ÎN CAZUL FAPTELOR PREVĂZUTE LA ART. 179 COD CONTRAVENȚIONAL AL REPUBLICII MOLDOVA

Abstract

Studiul este consacrat analizei regimului juridic al termenului special de prescripție a răspunderii contravenționale aplicabil faptelor prevăzute la art. 179 din Codul contravențional al Republicii Moldova, având ca obiect construcțiile neautorizate și intervențiile neautorizate asupra construcțiilor existente.

Cercetarea valorifică interpretarea sistemică a normelor contravenționale incidente, cu accent pe particularitățile care justifică instituirea unui termen special de prescripție, distinct de regula generală. În acest context, sunt examinate condițiile de incidență ale termenului special, momentul de început al curgerii acestuia, precum și impactul calificării juridice a faptei asupra determinării prescripției, în special în ipoteza caracterului continuu al contravenției.

Analiza relevă dificultăți de aplicare generate de ambiguități normative și de lipsa unor repere unita-

re în practică, susceptibile de a afecta previzibilitatea actului de sancționare. În consecință, sunt formulate concluzii orientate spre clarificarea cadrului interpretativ și consolidarea unei aplicări coerente a instituției prescripției în domeniul construcțiilor.

Cuvinte-cheie: prescripție contravențională, termen special de prescripție, construcții neautorizate, contravenție continuă, răspundere contravențională, securitate juridică.

Introduction. The statute of limitations for administrative liability is one of the fundamental institutions of administrative law, playing a crucial role both in ensuring the stability of legal relationships and in guaranteeing respect for individuals' fundamental rights and freedoms. In the context of the Republic of Moldova, the Administrative Offenses Code expressly regulates this institution, establishing time limits within which a person may be held administratively liable. This paper aims to analyze how the statute of limitations for administrative liability is determined and applied in the case of the acts provided for in Article 179 of the Administrative Offenses Code of the Republic of Moldova, concerning unauthorized construction and unauthorized alterations to existing structures.

The choice of this topic is not coincidental, as unauthorized construction constitutes a distinct category of administrative offenses, characterized by their persistence over time and by specific legal and social consequences. Consequently, correctly determining the point at which the statute of limitations begins to run, as well as the proper application of the relevant legal provisions, raises practical and theoretical issues that require careful analysis.

Methods and materials applied. In this study on the legal framework governing the special statute of limitations for administrative liability applicable to offenses in the field of urban planning and construction, analytical methods specific to legal and administrative studies were employed. The following were applied: the method of logical-legal analysis, deductive and inductive methods, the comparative method, as well as the method of synthesis, which facilitated the formulation of theoretical and practical conclusions on this topic.

The research's supporting materials include normative acts from the administrative law of the Republic of Moldova, particularly the Administrative Code and related legislation on urban planning and construction, alongside specialized doctrine, national case law, and relevant doctrinal opinions. The study is also based on international documents and scholarly works that directly address the issue of legality in construction permitting and unauthorized interventions on the built environment.

Discussions and results obtained. The statute of limitations for administrative liability is a ground that precludes the imposition of an administrative sanction after the expiration of a period established by law, either from the date the offense was committed or, in the case of continuing offenses, from the date it was discovered. As specialized doctrine indicates, the purpose of the statute of limitations is to ensure the stability of social relations, as well as to prevent legal uncertainty that might arise as a result of a prolonged period of time elapsing since the commission of the administrative offense.

Upon analyzing domestic legal doctrine, we have noted that the statute of limitations for administrative liability serves multiple functions, as follows: first, it serves to stabilize legal relationships, since, after the expiration of the statutory period, the person can no longer be sanctioned, which brings clarity and certainty regarding their legal status; second, the statute of limitations serves to encourage the competent authorities to investigate and sanction administrative offenses within a reasonable timeframe, which contributes to increasing the efficiency of the administrative justice system; third, it pro-

tects the individual from prolonged prosecution, which could unjustifiably affect their rights and freedoms protected by both the Constitution and international treaties.

The Administrative Offenses Code of the Republic of Moldova provides for two categories of statutes of limitations: the general statute of limitations and the special statute of limitations. According to Article 30 of the Administrative Offenses Code, the general statute of limitations for holding a person administratively liable is 18 months, and the special statute of limitations is 24 months from the date the administrative offense was committed. In our opinion, the current regulation of the statute of limitations for administrative offenses is fairer both for law enforcement agencies, which will have sufficient time for detection, analysis/investigation, and sanctioning, and for the victim or society, which have a vested interest in restoring social justice and preventing the commission of new offenses.

In this way, both general and specific prevention can be achieved, and, on the one hand, a sense of security regarding protected social values can be fostered, and, on the other hand, trust in the authority of the law can be established.

In addition to establishing general and special statutes of limitations for administrative liability, the legislature must expressly enshrine the rule that, in cases where an administrative offense simultaneously meets the elements of a criminal offense, the statute of limitations provided for under criminal law applies. Such a legislative solution is particularly relevant in the context of the present analysis, given that certain acts involving the construction of unauthorized structures may exceed the scope of administrative offenses and, depending on the degree of concrete social danger, may be legally classified as criminal offenses.

Upon analyzing the provisions of Article 179 of the Code of Administrative Offenses, we find that it penalizes the construction of structures of any category, as well as works involving the modification, renovation, reinforcement, and major repair of buildings and structures, without a building permit. Depending on the scale and consequences of such unauthorized construction, the act may also meet the elements of a criminal offense, for example under Article 258 of the Criminal Code (Violation of rules governing the use, repair, and modification of apartments in a residential building). In this situation, the applicable statute of limitations will no longer be the special 24-month period, but rather the statute of limitations for criminal liability, which is considerably longer—3 years.

This dual regulation raises the issue of correctly determining the legal nature of the act committed and, by extension, the applicable statute of limitations.

Article 179 of the Code of Administrative Offenses of the Republic of Moldova provides for liability for "unauthorized construction and unauthorized alterations to existing structures." According to the law, the construction of any category of structures, as well as work involving modification, renovation, reinforcement, and major repairs of buildings and structures—regardless of the type of ownership or intended use—without a building permit issued in the prescribed manner is punishable by a fine.

As noted by S. Ciochina and D. Cojocari, Article 179 of the Code of Administrative Offenses contains the following elements constituting the offense: "the generic legal object—represents social relations in the field of construction [4, p. 177], which directly pertain to violations of legislation and regulatory documents in construction, as well as the construction of unauthorized structures and unauthorized alterations to existing structures. Furthermore, the objective aspect may manifest itself through action or inaction. Therefore, establishing the administrative offense involves, first and foremost, accurately determining the objective aspect as a constituent element of the offense. Thus, Article

177(3) provides for nine variants of the objective aspect, and paragraph (4) provides for three variants of the objective aspect, which are subject to a special statute of limitations.

By comparison, we note that Article 179 provides for only four variants of the objective element, and all are subject to the same special statute of limitations of 24 months provided for in Article 30(3) of the Code of Administrative Offenses" [1, pp. 129–130].

It is important to note that the administrative offense provided for in Article 179 may be committed both actively (by actually carrying out unauthorized construction) and by omission (by failing to comply with the obligation to obtain a building permit in advance).

A comprehensive analysis of Article 179 reveals that the subject of administrative liability for this category of offense may be: a natural person, a person in a position of responsibility, or a legal entity.

One of the most important characteristics of the act provided for in Article 179 is its continuous nature. Unauthorized construction is not a one-time act, but one that extends over time, both through the very existence of the structure and through the legal and social effects it produces.

According to Article 30(9) of the Code of Administrative Offenses, in the case of a continuing offense or a prolonged offense, the statute of limitations begins to run from the date on which the last act or omission occurred. Thus, if a person constructs an unauthorized building, the administrative offense does not continue for the entire duration of the building's existence, except in cases where a court order for demolition or legalization of the building is issued. This particularity has major consequences for determining the statute of limitations.

This means that the competent authorities may establish the administrative offense within 24 months from the completion of construction work of any category, as well as work involving modification, renovation, reinforcement, and major repairs of buildings and structures.

From a practical standpoint, the continuing nature of the administrative offense provided for in Article 179 has significant implications for the possibility of holding the perpetrator administratively liable.

However, this legislative approach must be carefully analyzed, as it does not create situations of legal uncertainty. For example, a person who carries out unauthorized construction for 6 months and who has not been detected by the authorities may be held administratively liable at any time during the following 24 months, which does not affect the principle of legal certainty and contributes to the restoration of social equity.

As time passes, criminal or administrative offenses become increasingly difficult to investigate and gather evidence confirming a person's involvement in their commission. Furthermore, the perpetrator themselves suffers from the constant fear of being punished or, conversely, enjoys the possibility of avoiding punishment.

The statute of limitations was known to the Greeks, the Romans, and in feudal laws. For example, Article 263 of Ioan Sturza's Criminal Code of 1826 regulated the statute of limitations, stating that "by prescription, guilt and punishment are extinguished" [2].

The Romanian author E.C. Decusară notes in his work that Article 56 of the 1926 Criminal Code provided for a review to the detriment of the acquitted party, reproducing the following provision: "anyone who has been found innocent by a court may, for the offense of which they were accused, be required to clear their name a second time, provided that the statute of limitations has not expired since the time of the first trial" [3 p. 9].

We note that over time, the statute of limitations has been regarded by the legislature as an institution of criminal procedure, a fact we also observed in the Penal Code

of Charles II, which stipulated that, "in the event of a conflict between two or more successive laws concerning the statute of limitations for public prosecution or penalties, the law providing for the shortest statute of limitations shall apply". Here, too, we observe adherence to the principle of humanism and the application of the law most favorable to the offender.

To correctly determine the starting point of the statute of limitations for administrative liability, we consider it necessary to first examine the concept of "term".

The Explanatory Dictionary of the Romanian Language offers several definitions of the term "term", including:

1. A predetermined date for the execution of a payment, obligation, etc.;

2. A (predetermined) period of time within which something must be accomplished or occur;

3. A future event that is certain to occur but uncertain as to the date on which it will occur [4].

For its part, the Criminal Code does not expressly regulate the concept of "time limit," addressing in Article 60 only the time periods within which state authorities must take all necessary actions to identify and punish the guilty party. In turn, Article 230 of the Code of Criminal Procedure expressly provides that "time limits in criminal proceedings are time periods within which or upon the expiration of which procedural actions may be taken in accordance with the provisions of this Code" [5].

It is important to note that the statute of limitations for administrative offenses is always linked to the imposition of administrative sanctions or penalties. An increase in the severity of the penalty directly leads to a change in the statute of limitations. Thus, the statute of limitations varies depending on the severity of the administrative offense and, consequently, on the severity of the penalty.

Consequently, to achieve the purpose of administrative law, the sanction must be applied promptly to remedy the harm, restore social justice, and prevent the commission of new offenses, because the later administrative liability is imposed relative to the date of the offense, the less effective it becomes, since its consequences may have been remedied or the victim's trust in state authority may have been eroded.

Correctly determining the point at which the statute of limitations begins to run is an essential matter in the application of the provisions of Article 179 of the Misdemeanor Code.

After a comprehensive analysis of the provisions of Article 30 and the offense described in Article 179, we have determined that this constitutes a continuing offense, which triggers the application of the special time limit provided for in Article 30(3). However, the mere application of the 3-year statute of limitations is not sufficient, because, as mentioned, we are dealing with a continuing offense. This fact necessitates the application of the special statute of limitations under the conditions of Article 30(9), which provides that, in the case of a continuing or extended offense, the statute of limitations begins to run from the date of the last act or omission.

In practice, determining the moment of the offense's discovery proves to be a matter prone to interpretative difficulties, particularly in cases involving successive findings or when the investigative activity is carried out by distinct authorities. For example, in the area of unauthorized construction, the National Inspectorate for Technical Supervision may issue a finding report, but this may be subject to judicial review. In such a scenario, the issue arises of determining the relevant starting point for the statute of limitations, namely whether it is calculated from the date the first finding report was drawn up or

from the moment the judicially validated report becomes final.

Another issue frequently encountered in practice concerns the scenario of successive modifications made to an unauthorized structure through subsequent additions or extensions. In this context, the legal distinction hinges on the choice between the existence of a continuing offense and the presence of multiple distinct acts. The approach derived from case law indicates that, to the extent that subsequent interventions are organically integrated into the structure of the initial construction, without affecting the material and legal unity of the unlawful conduct, the act retains its continuous nature, and the statute of limitations begins to run from the time of the last finding.

Another significant issue in the application of Article 179 concerns the relationship between the statute of limitations and the subsequent obtaining of a building permit. If the person who carried out the unauthorized construction obtains, after the finding, a building permit that legalizes the work performed, the question arises as to whether this eliminates administrative liability and, implicitly, whether the statute of limitations continues to run.

From a theoretical perspective, it is generally accepted that obtaining a building permit after the work has been completed does not negate the administrative offense nature of the act committed at the time of construction, since the offense exists independently of subsequent legalization. However, in practice, courts tend to apply the principle of proportionality and consider that, to the extent that the construction was subsequently authorized, the public interest in sanctioning the act is diminished, which may influence both the imposition of the sanction and the calculation of the statute of limitations.

Article 179 of the Code of Administrative Offenses falls within the scope of the special 24-month statute of limitations, pursuant to Article 30(3) of the same code. This legislative provision constitutes an exception to the general 18-month statute of limitations set forth in paragraph (2) of the same article and is justified by the specific nature of offenses in the construction sector.

Unlike the general 18-month statute of limitations applicable to simple administrative offenses, the special 24-month statute of limitations reflects the legislature's intent to grant authorities a longer period to identify, investigate, and penalize acts of unauthorized construction. This 6-month difference can be crucial in practice, given the complexity of these cases, which often involve technical expert opinions, document reviews, and assessments of the impact on building safety and the environment.

A fundamental aspect of the current regulation, provided for in Article 30(5) of the Code of Administrative Offenses, is that the statute of limitations begins to run from the date the offense was committed. This provision is of paramount importance in the case of the continuing offense under Article 179.

Although the offense is of a continuing nature (unauthorized construction and maintenance over time), the law establishes a clear point in time from which the 24-month period begins to run. In legal doctrine and practice, the "date of commission" for a continuing offense is, as a rule, the date the act ceases, that is, the date the unauthorized construction work is completed or the date of the last unauthorized intervention on the existing structure.

It becomes impossible to penalize past offenses: If a person completed an unauthorized construction more than 24 months ago, and this offense was not detected and penalized during that period, the statute of limitations has expired. Even if the authorities discover the construction today, they can no longer impose a fine, as the right to impose administrative liability has expired.

Extinction of liability, not of the obligation to demolish: It is important to note that the statute of limitations extinguishes the right to impose an administrative penalty (fine), but does not affect the civil or administrative obligation to demolish the unauthorized construction if such demolition is ordered by another legal instrument (e.g., a separate court ruling).

In practice, determining the exact date on which the act was "committed" can be difficult, especially in the case of construction projects carried out in successive phases or in the absence of clear evidence (invoices, contracts, witness statements). In such situations, the investigating authorities and courts must determine, based on the evidence, the point at which the unlawful act was completed.

Another practical issue concerns situations where the unauthorized construction is subsequently modified through extensions or further alterations. If these modifications are substantial and can be considered distinct new acts, the 24-month period will run from the date of each modification for the corresponding part of the construction. If, however, the modifications are minor and do not alter the essence of the initial act, the date of commission may be considered to remain that of the initial construction.

The introduction of the special 24-month period for Article 179 represents an improvement over the previous regulation, as it acknowledges the complexity of these cases. Nevertheless, the 24-month period remains relatively short given the specific dynamics of the construction sector, where:

Findings are often made ex officio, and the supervisory authorities (the State Construction Inspectorate) may have limited resources.

Unauthorized construction may be detected late, especially in less accessible areas.

Litigation procedures (challenging inspection reports) can take months or even years, and the 24-month period runs independently of these, except for the interruption provided for in paragraph (5/1).

Therefore, although the 24-month period is more generous than the general one, its practical effectiveness depends on the authorities' promptness in acting and finalizing the proceedings within this timeframe.

An important safeguard against the premature expiration of liability is the interruption mechanism provided for in Article 30(5¹) of the Code of Administrative Offenses. According to this provision, the statute of limitations is interrupted if, prior to the expiration of the 18- or 24-month periods, the administrative offense case is referred to the court for adjudication.

This means that once the case is filed with the court, the statute of limitations is suspended. From that point on, the time required for the trial no longer counts toward the 24-month period. This provision safeguards the ability to punish the offense even when the judicial process is prolonged, preventing delays in the judicial system from leading to the statute of limitations expiring.

Although case law and legal doctrine recognize the continuous nature of the offense under Article 179, the current text of Article 30(5)—which establishes that the statute of limitations begins to run from the date of commission, not from the date of discovery—creates a certain tension with the specific nature of continuous offenses. While for an instantaneous offense (e.g., speeding), the date of commission is clear, for a continuing offense (e.g., an unauthorized construction that "exists" for years), this date is less evident.

To enhance legal certainty and avoid divergent interpretations, any legislative reform could expressly clarify, either in Article 30 or in a special law, that:

For continuing offenses, the "date of commission" is considered to be the date of the

last material act of enforcement or, as the case may be, the date on which the offense was brought into compliance with the law through the obtaining of a permit.

The continued existence of the construction over time, without further acts of execution, does not constitute an extension of the statute of limitations.

Such clarification would bring administrative offense legislation into line with the constitutional principles of legal predictability and would protect individuals who, after a considerable period of time, can no longer be held liable for an old offense that was not detected in a timely manner by the authorities.

Conclusions. A first conclusion is that the administrative offense in question is not a one-time occurrence, but rather one that continues over time by virtue of the very existence of the unauthorized structure. According to Article 30(9) of the Code of Administrative Offenses, the 24-month statute of limitations begins to run from the date of the last act or omission, which corresponds, in practice, to the completion of construction work or the last unauthorized intervention. This provision provides predictability, as liability expires 24 months after the act has been completed, not at an indefinite interval following its discovery. At the same time, it requires enforcement authorities to act promptly, as the expiration of the statute of limitations precludes the imposition of sanctions, without, however, affecting the civil or administrative obligation to demolish the structure.

The second conclusion is that the introduction of the special 24-month time limit for Article 179 (as opposed to the general 18-month time limit) reflects the legislature's recognition of the particular complexity of cases involving urban planning and construction. However, practice shows that the 24-month period can be difficult to meet in situations involving technical expert opinions, complex reviews of urban planning documentation, the handling of voluminous evidence, or the challenge of official reports in court. Although the interruption mechanism provided for in Art. 30(5^1) (referral of the case to court) offers partial protection against premature prescription, the practical effectiveness of the time limit depends largely on the promptness of the authorities to act.

Another conclusion is that the dual classification—administrative offense vs. criminal offense - creates uncertainty in determining the applicable statute of limitations.

If the act of unauthorized construction meets the elements of a criminal offense (for example, Article 258 of the Criminal Code—violation of the rules governing the use, repair, and alteration of apartments in a residential building), the applicable statute of limitations is no longer the special 24-month period, but rather the statute of limitations for criminal liability (typically 3 years or more). This dual regulation creates uncertainty for the person concerned, who cannot know with certainty the applicable statute of limitations until the authorities have definitively classified the act. To enhance legal certainty, either a clearer delineation of the criteria for distinguishing between a misdemeanor and a felony in this area or a standardization of the time limits would be required.

A final conclusion is that, although legal doctrine and practice recognize the continuing nature of the misdemeanor under Article 179, the current text of Article 30(5) of the Misdemeanor Code stipulates that the statute of limitations begins to run from the date the misdemeanor was committed, without expressly defining this point in time for continuing offenses. To eliminate divergent interpretations and enhance the certainty of legal relations, a potential legislative reform could clarify either in Article 30 or through a special law that, for continuing offenses, the "date of commission" is considered to be the date of the last material act of execution (e.g., completion of construction), and that the mere maintenance of the construction over time, without new acts of execution, does not extend the statute of limitations. Such clarification would bring the legislation on ad-

ministrative offenses into line with the principle of legal predictability, enshrined in the Constitution and European law.

Bibliographical references

1. Ciochină Snejana, Cojocari Dorel. Article: "Legal Analysis of the Special Statute of Limitations for Offenses Under Articles 177 and 179 of the Contravention Code of the Republic of Moldova". In: Conference "Integration through Research and Innovation", Chișinău, November 6-7, 2025.
2. https://dspace.bcucluj.ro/handle/123456789/67779 (accessed 04.07.2026).
3. E.C. Decusară. Review in Criminal Matters. In: "Curierul judiciar" Printing House, Bucharest, 1922, p. 9.
4. https://dexonline.ro/definitie/termen/493945 (accessed 10.10.2025).
5. Criminal Procedure Code of the Republic of Moldova No.122 of March 14, 2003.
6. Code of Administrative Offenses of the Republic of Moldova No.218/2008, published in the Official Gazette of the Republic of Moldova, No.78-84/195-197 of April 21, 2009.
7. Criminal Code of the Republic of Moldova No.985/2002, published in the Official Gazette of the Republic of Moldova, Nos.128–129/1012 of September 13, 2002.

CZU 343.272:343.35 **DOI: https://doi.org/10.5281/zenodo.20916932**

TRACKING AND RECOVERING OF CRIMINAL ASSETS

Octavian PAVLOVSCHI,
PhD Candidate,
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs,
Prosecutor, Chișinău Municipal Prosecutor's Office, Rîșcani Office,
Republic of Moldova
ORCID: 0009-0007-4733-7603

Abstract

This scientific paper provides a multidimensional analysis of the process of tracking and recovering criminal assets, a field of paramount importance for the security architecture and effectiveness of criminal justice in the Republic of Moldova. The research begins with the historical evolution of the institution of confiscation, moving on to the integration of the "follow the money" principle. The role of precautionary seizure as an essential procedural guarantor in repairing damages is analyzed in detail. A vast chapter is dedicated to global synergy and international cooperation, analyzing operational channels of information exchange (CARIN, Egmont Group), the efficiency of Joint Investigation Teams (JIT) over classic Letters Rogatory, and the challenges of offshore jurisdictions.

The paper delves into cooperation tactics in the sphere of virtual assets, highlighting innovative tools such as the new Interpol alerts (Silver Notice) and the stages of blockchain forensics. Special attention is also given to procedural guarantees through the lens of ECHR jurisprudence, which validates extended and in rem confiscation.

Finally, the study highlights the normative framework, through Law no. 4/2026, for the repatriation and social reuse of confiscated assets, transforming the proceeds of crime into resources for the community.

Keywords: money laundering, parallel financial investigations, precautionary seizure, international cooperation, CARIN, Egmont Group, JIT, Silver Notice, extended confiscation, blockchain forensics, social reuse.

URMĂRIREA ȘI RECUPERAREA BUNURILOR INFRACȚIONALE

Abstract

Prezenta lucrare științifică analizează procesul de urmărire și recuperare a activelor infracționale, un domeniu de maximă importanță pentru arhitectura de securitate și eficacitatea justiției penale din Republica Moldova. Cercetarea debutează cu o incursiune în evoluția istorică a instituției confiscării și recuperării, trecând la integrarea principiului „follow the money" în legislația națională. Este analizat detaliat rolul sechestrului asigurător ca garant procesual esențial în repararea prejudiciului. Un capitol vast este dedicat sinergiei globale și cooperării internaționale, analizând canalele operative de schimb de informații (CARIN, Grupul Egmont), eficiența echipelor comune de investigație (JIT) în detrimentul comisiilor rogatorii clasice, precum și provocările jurisdicțiilor offshore.

Lucrarea aprofundează tacticile de cooperare în sfera activelor virtuale, evidențiind instrumente inovatoare precum noile alerte Interpol (Silver Notice) și etapele analizei blockchain forensics. De asemenea, este acordată o atenție deosebită garanțiilor procesuale prin prisma jurisprudenței CEDO, care validează confiscarea extinsă și măsurile in rem.

În final, studiul evidențiază adoptarea cadrului normativ, prin Legea nr. 4/2026, pentru repatrierea și reutilizarea socială a bunurilor confiscate, o măsură ce transformă produsele infracțiunii în resurse pentru binele comunității.

Cuvinte-cheie: spălarea banilor, investigații financiare paralele, sechestru asigurător, cooperare internațională, CARIN, Grupul Egmont, JIT, Silver Notice, confiscare extinsă, blockchain forensics, reutilizare socială.

Introduction. The evolution of criminality in the 21st century has demonstrated a clear transition from traditional forms of crime to corporate-type criminality, motivated exclusively by profit maximization. In this context, criminal justice systems focused solely on the deprivation of liberty of offenders have proven to be insufficient. The prison sentence, applied to leaders of criminal groups or corrupt officials, is often perceived by them as an assumed "occupational risk", as long as the illicit wealth remains intact and is transferred to close associates or proxies. Therefore, globally, the paradigm of combating serious crime has shifted from sanctioning the person to tracking and neutralizing the proceeds of crime. The Republic of Moldova, being in the midst of the European integration process and having to manage the consequences of historical financial frauds (such as the bank fraud or the "Laundromat" type money laundering schemes), was forced to rapidly adapt its legislation. Although the creation of the Criminal Asset Recovery Agency (ARBI) in 2017 represented a major institutional progress, the asset recovery process remains, sometimes, cumbersome and riddled with legislative and judicial obstacles. This paper aims to dissect the tension between national norms and international requirements, analyzing the constitutional and jurisprudential foundations that must guide this fight.

Methods and materials applied. This research uses a complex methodological toolkit. Firstly, the logical-legal analysis method was essential to dissect the national legal texts - especially Art. 106 (Special confiscation) and Art. 106[1] (Extended confiscation) of the Criminal Code of the Republic of Moldova, as well as the provisions regarding the application of seizure from the Criminal Procedure Code (Art. 203 and subsequent) [1]. Through the comparative law method, we mirrored these provisions with the fundamental international acts to which the Republic of Moldova is a party [2]:

- The United Nations Convention against Transnational Organized Crime (Palermo Convention, 2000);
- The United Nations Convention against Corruption (Merida Convention, 2003);
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention, 2005).

Also, we used the historical method to trace the evolution of the concept of seizure and "extended confiscation" in Moldovan law, from its introduction to the most recent amendments dictated by EU directives (especially Directive 2014/42/EU). The factual material was supplemented by the analysis of the judicial practice of the Supreme Court of Justice of the RM, the Decisions of the Constitutional Court, and the jurisprudence of the European Court of Human Rights (ECHR).

The tracking and recovery of criminal assets have gone through a complex evolutionary process, transforming from a simple accessory measure into an independent penal policy instrument. Historically, the confiscation of assets was viewed strictly as a complementary punishment or a safety measure applied to the visible instruments of the crime. This limited approach proved to be ineffective in the face of modern organized crime, which generates profits masked through financial engineering. Internationally, a turning point was the adoption of the UN Convention against Transnational Organized Crime (UNTOC) in 2000 and the UN Convention against Corruption (UNCAC) in 2003, which laid the foundations for global cooperation for asset repatriation.

In the Republic of Moldova, the evolution was marked by the elaboration of the analytical study regarding the mechanisms of asset recovery and confiscation in the Republic of Moldova, developed by the Basel Institute on Governance at the request of the United Nations Development Programme (UNDP), within the project "Strengthening the

capacities of the National Anticorruption Centre to exercise the functions of preventing and analyzing corruption", financed by the Ministry of Foreign Affairs of Norway [8]. Consequently, the transition from a fragmented system to an integrated policy was achieved through the creation, in 2017, of the Criminal Asset Recovery Agency (ARBI), a structure designed to conduct financial investigations at European standards.

The backbone of any crime-fighting strategy is the "follow the money" principle. In national legislation, the materialization of this principle is done through the "parallel financial investigation". The Criminal Procedure Code defines parallel financial investigations as the totality of criminal prosecution actions, special investigative measures and/or actions provided by Law No.48/2017 regarding the Criminal Asset Recovery Agency carried out with the purpose of accumulating evidence regarding the suspect, the accused, the civilly responsible party, the defendant or the convicted person, their patrimony and the assets that are in their effective ownership, the patrimony of the owner and the administrator of the assets that are in the effective ownership of the suspect, accused, civilly responsible party, defendant or convicted person, in order to recover the criminal assets or with the purpose of identifying and tracking the assets that are or may be subject to freezing and confiscation measures [2]. These represent the link that connects the simple identification of the proceeds of crime to its freezing and confiscation.

The identification and tracking of assets (tracing) represent the essential analytical component of the asset recovery process. The efficiency of this process depends directly on the ability of the competent authorities to unmask complex property dissimulation schemes. For the success of recovery, financial investigations must not be consecutive to the criminal one, but parallel: while the criminal investigation seeks evidence of guilt, parallel financial investigations focus on money flows. [1] The fundamental techniques applied in this phase include:

- ***Financial profile analysis*:** Reconstructing the history of the suspect's income and expenses to identify undeclared sources;
- ***The expenditure method*:** Identifying owned assets by comparing luxury expenditures with official revenues;
- ***Forensic Accounting*:** Using forensic accounting techniques to detect the manipulation of commercial registries or fictitious transfers.

Efficient tracking also requires the interconnection of databases, including querying the Real Estate Register, the Public Services Agency (for vehicles and companies) and, primarily, the register of beneficial owners to go beyond legal fronts. Additionally, OSINT (Open Source Intelligence) techniques allow the identification of assets by analyzing the digital presence of suspects, where valuable assets that do not appear in official registers are frequently exposed.

Once the assets are identified, the precautionary measure of judicial seizure (freezing) is required. This constitutes an imperative procedural act, elaborated by the state, consisting of the application of prohibitions on the disposal or temporary use of the suspected or accused person's assets.

From a strategic perspective, the seizure represents the cornerstone of the recovery process, its primary goal being the prevention of the dissipation, concealment, destruction or alienation of illicit assets during the criminal process. Its importance lies in guaranteeing the efficiency of the act of justice: without this measure, confiscation decisions would remain simple "decisions on paper", the state being in a factual impossibility to recover the damage. Thus, the rapid application of the seizure acts as a material guarantee of the applicability of special or extended confiscation.

In accordance with Art. 203 of the Code of Criminal Procedure of the RM, the seizure is applied to ensure the reparation of the damage, the civil action or the possible confiscation [2].

The entire mechanism is structured into four fundamental stages:

1. Tracking criminal assets and accumulating evidence (parallel financial investigations);
2. Freezing criminal assets (instituting the seizure);
3. Confiscation of criminal assets and reparation of damages (judicial stage);
4. Restitution and capitalization of assets (reintegration into the legal circuit or social use).

The role of the Criminal Asset Recovery Agency (ARBI) is crucial in the first two stages. Procedurally, after the identification of suspicious assets through parallel investigations, the prosecutor presents a motivated request to the investigating judge. Based on the court's authorization, a ruling is issued, and ARBI or the criminal prosecution officers proceed to the effective application of the seizure, which involves inventorying, detailed description, and prohibiting trading in public registers (RBI, ASP, etc.).

To remedy the historical challenge of asset depreciation during long trials, the law gives ARBI the responsibility of administering and conserving them [3].

In the situation where the goods are perishable, amortize rapidly or require maintenance costs disproportionate to their value (e.g., luxury cars, machinery, fluctuating shares), the legislation allows their anticipatory sale, with or without the owner's consent (under conditions regulated by the court). The resulting sums are deposited into secure treasury accounts. This mechanism, which transposes European directives, guarantees that the state will collect the real value in case of confiscation or that the exact countervalue will be returned to the acquitted person, avoiding the return of a damaged asset.

In a globalized criminal economy, international cooperation has ceased to be an auxiliary mechanism, becoming the sine qua non condition for the success of any financial investigation. The Republic of Moldova bases its efforts on universal conventional pillars: the Palermo Convention (2000) on transnational organized crime, the Merida Convention (2003) against corruption and, specifically, the Warsaw Convention (2005) of the Council of Europe. The latter represents a qualitative leap, imposing on state parties the obligation to provide assistance not only for the identification of assets, but also for the effective execution of precautionary measures and confiscation orders.

Beyond formal procedures, the success of "following the money" depends on the speed of operative data exchange. The Republic of Moldova, through ARBI, actively participates in "Asset Recovery Office" (ARO) type networks, such as the CARIN Network (Camden Asset Recovery Inter-Agency Network), developed by EUROPOL, which represents an informal network of practitioners and experts in identifying, seizing and confiscating the proceeds of crime, spanning 61 jurisdictions from several states including EU ones, but also 13 international organizations. These platforms allow direct contact between experts to locate assets before submitting a formal request for assistance [12]. Complementarily, the exchange of financial information through the Egmont Group facilitates the traceability of suspected money laundering flows, offering investigators the necessary "map" for instituting cross-border seizures [13].

Apart from the CARIN Network and the Egmont Group, there are other vital international mechanisms and bodies for cross-border cooperation and recovery. These include:

- **EUROJUST:** Facilitates the coordination of complex investigations, the Republic of Moldova cooperating through a liaison prosecutor.

• **EUROPOL (SIENA):** Manages the secure information system SIENA, which ensures the exchange of operative data regarding transnational organized crime.

• **INTERPOL:** Provides access to global databases and allows 24/7 operative data exchange between member states.

• **SELEC (Southeast European Law Enforcement Center):** Supports Southeast European states through liaison officers and national contact points, facilitating the rapid flow of information and joint regional investigations.

• **UNODC (United Nations Office on Drugs and Crime):** Supports member countries and manages the GlobE network, intended for information exchange between national contact points in transnational corruption cases.

• **Regional networks:** there is cooperation with regional networks such as ARSIN, RRAG, ARIN-AP, ARIN-WA and ARIN-EA, essential for tracking assets in jurisdictions in Africa, Latin America and Asia-Pacific [6].

When criminal assets are located abroad, the classic mechanism remains that of mutual legal assistance or Letters Rogatory. However, under the influence of Directive 2014/42/EU [7], there is a tendency to simplify procedures through:

• **Mutual recognition:** The ability of courts in the Republic of Moldova to request the direct execution of a seizure or confiscation order in another member state of international treaties.

• **Joint Investigation Teams (JIT):** These allow Moldovan prosecutors and foreign counterparts to act in a coordinated manner, eliminating bureaucratic barriers and allowing the simultaneous execution of searches and seizures in multiple jurisdictions.

• **Asset repatriation:** A final stage that involves negotiating the sharing of confiscated assets between the requesting and requested state, according to international "asset sharing" standards.

In an increasingly dematerialized financial environment, the notion of "asset" has undergone profound mutations. Virtual assets (e.g., cryptocurrencies like Bitcoin, Ethereum or stablecoins like USDT) are not just simple computer data, but represent forms of digital value that can be electronically transferred, stored or traded. According to the new European regulations (MiCA Regulation no. 2023/1114), the regulatory framework for crypto-assets has become extremely strict, focusing on transparency, combating money laundering and investor protection. Virtual assets are recognized as financial instruments that can be used both for licit purposes and for money laundering or terrorism financing.

From the perspective of the legislation of the Republic of Moldova, virtual assets must be interpreted through the lens of Art. 106 of the Criminal Code as being "goods" or "values", regardless of their form (digital or physical), because they incorporate a certain economic value that can be transformed into fiat currency. By the end of 2025, the illicit volume through crypto-assets reached global records of tens of billions of dollars [9], forcing authorities to adopt new tools.

Investigating crimes involving virtual assets requires a paradigm shift: from tracking bank payment orders to blockchain analysis. To understand how money tracking works in the digital environment, it is essential to visualize the "trace" left on the blockchain. Although addresses are pseudonymous, their flow is public and immutable.

From a procedural point of view, the digital investigation goes through a specific cycle of blockchain forensics:

• **Identification:** Determining the blockchain networks used (Bitcoin, Ethereum, etc.) and understanding the typology of the fraud, including the digital wallets associated with the suspect.

• **Collection and Preservation:** Downloading and securing data from the blockchain. Since the ledgers are public, a classic interception warrant is not necessary, but the data integrity must be legally protected by applying cryptographic functions (hash).

• **Analysis (On-Chain) and cluster analysis:** Using advanced tools (such as clustering algorithms offered by analytical platforms like Chainalysis Reactor) to discover how money is layered through mixers, smart contracts or decentralized bridges. Investigators can group seemingly distinct addresses into a single "cluster" belonging to the same criminal entity.

• **Examination through VASP:** Correlating digital addresses with real-world identities. The tracking ends with the identification of "nodes" (Exchanges or Virtual Asset Service Providers) where anonymity meets banking regulations and where crypto-assets are converted into real money. Here, Know Your Customer (KYC) rules are applied, allowing the identification of the beneficial owner.

To respond to the explosion of money laundering through digital assets, Interpol piloted an essential tool: Silver Notice [10], initially launched as a testing program at the beginning of 2025, including 51 states. This international alert is issued exclusively for locating and identifying criminal assets, facilitating the rapid freezing of cryptocurrencies and hidden wealth globally, before suspects convert them into fiat currency.

The identification and seizure of digital assets involve specific technical procedures:

• **Control over private keys:** Unlike real estate, "ownership" over cryptocurrencies is given by the possession of the private key or the seed phrase. Freezing involves the transfer of assets from the suspect's wallet to a secure state-controlled wallet (administered by ARBI).

• **Exchange-level seizure:** If the assets are kept on a centralized platform (VASP), the prosecutor issues an emergency freezing request or a seizure ordinance to the compliance departments of the service provider.

Extended confiscation (Art. 106^1 CC RM) can also be ordered on crypto wallets with values that clearly exceed the licit income of the accused. However, due to the high volatility of cryptocurrencies, ARBI must use the anticipatory sale mechanism or order immediate conversion into fiat currency to conserve the seized value until the final sentence is pronounced.

A persistent challenge in the asset recovery architecture is the interaction with off-shore jurisdictions. These territories are frequently used by organized criminal groups and corrupt politically exposed persons due to two essential features: corporate opacity (which hides the real beneficiary through trust structures or shell companies) and rigorous bank secrecy. Recovery from off-shore often hits strict laws that prohibit banks from disclosing information. Because formal instruments like Letters Rogatory are lengthy procedures, often used by lawyers to delay the process through local appeals, success depends on rapid tactics. The exchange of "FIU-to-FIU" information (through the Office for Prevention and Fight against Money Laundering of the RM and the Egmont Group) represents the main method to overcome these obstacles in the intelligence phase. This exchange allows investigators to obtain the "map" of transactions and locate off-shore accounts before filing a formal request for mutual legal assistance (MLA), thus preventing the dissipation of funds.

For the execution of formal requests (MLA), investigators invoke the provisions of multilateral conventions, such as the UN Convention against Corruption (UNCAC) or the UN Convention against Transnational Organized Crime (UNTOC). Article 46 of UNCAC imperatively stipulates that a state cannot refuse legal assistance solely on the grounds of

bank secrecy, thus obliging authorities in off-shore jurisdictions to collaborate. In cases of extreme opacity or with non-cooperative jurisdictions, success also depends on the pressure exerted through international evaluation mechanisms (such as MONEYVAL or FATF), forcing the respective jurisdictions to provide data about beneficial owners under the penalty of inclusion on the "grey list" of financial centers.

An essential tactic recommended in interacting with funds directed to off-shore is non-conviction based confiscation (also known as civil confiscation). This in rem procedure is extremely efficient, sometimes becoming the only solution when the criminal has fled to the off-shore jurisdiction, has died, or benefits from immunity. The approach allows the state (e.g., through ARBI or the prosecutor's office) to request the court to transfer the assets into state ownership based on civil standards of proof, focusing on the illicit nature of the asset and not on the personal conviction of the owner, with provisions for extending applicability even if the person is released from criminal liability or punishment, as well as confiscation from third parties if they knew or should have known that the assets come from criminal activities or were transferred to avoid confiscation; at the same time, the confiscation of the original asset is provided, or, if it cannot be found, the court can order the confiscation of another asset of equal value.

The *Cosovan v. Republic of Moldova* (No.2) Judgment, delivered by the European Court of Human Rights (ECtHR) on October 8, 2024, is a fundamental precedent that clarifies the limits of special confiscation in the absence of a criminal conviction (non-conviction based confiscation) in relation to the presumption of innocence [13]. This judgment gives a legal "green light" to the authorities in the Republic of Moldova to use special and extended confiscation mechanisms more courageously in corruption or money laundering files where a final conviction cannot be obtained, provided that the procedure is focused on the assets (in rem) and not on the personal culpability of the individual.

In specialized literature, the need to establish clear delimitation signs between the two forms of confiscation has been emphasized.

- **Special confiscation** (Art. 106 CC RM) is directly linked to the criminal act brought to judgment, targeting the assets used or intended for the commission of the crime or resulting directly from it. Here, the burden of proof is absolute ("beyond any reasonable doubt"), and the causal link must be certainly proven by the prosecutor [1].
- In contrast, **extended confiscation** (Art. 106^1 CC RM) targets a state of unjustified enrichment, deduced from an overall criminal behavior. It allows the confiscation of assets whose value considerably exceeds the licit income of the convicted person, when the court is convinced that they originate from criminal activities. Here operates a more flexible standard of proof – "the balance of probabilities" [1].

The introduction of extended confiscation generated fears regarding the violation of the presumption of innocence and the right to property. These were settled by the Constitutional Court of the RM through Decision No.6 of April 16, 2015. The Court ruled that the presumption of the licit character of acquiring wealth is not an absolute one, but a relative one (juris tantum), which can be overturned by evidence in the criminal process. Thus, extended confiscation was declared constitutional, being justified by the major public interest to combat corruption and organized crime [5].

The final point of the recovery mechanism is the destination of the funds. Responding to European standards, Law No.4 of February 5, 2026, regarding the use for social purposes or in the public interest of confiscated assets, was adopted, promulgated by the Decree of the President of the RM No.540-X and officially published on February 26, 2026 [4]. This innovative normative act radically changes the paradigm: the recovered

amounts, including those repatriated from foreign jurisdictions, are no longer lost as a simple accounting figure in the state budget.

According to Article 2 of Law No.4/2026, the mechanism distinguishes two main directions of redistribution:

- **Social use:** Involves the redistribution of assets and sums of money to support medical, educational, cultural services and marginalized groups, with the primary goal of improving the quality of life and moral reparation of communities.
- **Use in the public interest:** Aims at allocating assets to public authorities and institutions, especially from the national defense, public order, and national security system, for the modernization of infrastructure and the consolidation of the functional capacities of the state.

To ensure transparent governance of this process, the law provides for the establishment of the "Commission for the management of confiscated assets" under the Ministry of Justice. This commission, conceived as a collegial body composed of 9 members (representatives of the relevant ministries – Finance, Internal Affairs, Health, Education, etc. – and of civil society), is responsible for evaluating and approving requests for the use of assets.

The exact financial distribution, established by law, ensures equitable financing:

- **70%** are transferred to the state budget to cover general damages;
- **20%** are redirected exclusively for the non-reimbursable financing of projects with a social or environmental impact proposed by non-governmental organizations;
- **10%** are reserved for strengthening the operational capacities of law enforcement institutions directly involved in asset recovery.

Conclusions. The evolution of criminal asset recovery in the Republic of Moldova demonstrates a mature transition from strictly punitive justice to restorative justice, oriented towards neutralizing the profit of transnational criminal organizations. The efficiency of combating financial crime no longer resides exclusively within national borders, but fundamentally depends on global synergy. The transition from cumbersome letters rogatory to the dynamism of Joint Investigation Teams (JIT), as well as the exchange of operative information through structures like the Egmont Group and other international mechanisms, represent crucial steps in reducing the reaction time of authorities. In addition, the adaptation of investigators to the complexity of offshore jurisdictions and the assimilation of advanced blockchain traceability methods define the modern profile of the investigation.

In parallel with the development of these offensive tools (judicial seizure and extended confiscation), the state must ensure strict respect for procedural guarantees outlined by ECHR and national jurisprudence. Finally, the legislative mechanism for the repatriation and social reuse of confiscated assets (regulated by Law No.4/2026) represents the moral triumph of the criminal process, demonstrating to society that the state has the power to transform the proceeds of organized crime into a public resource destined for the common good.

Bibliographical references

1. Criminal Code of the Republic of Moldova No.985-XV of 18.04.2002. In: Official Monitor of the Republic of Moldova, 13.09.2002, No.128-129.
2. Criminal Procedure Code of the Republic of Moldova No.122-XV of 14.03.2003. In: Official Monitor of the Republic of Moldova, 05.11.2013, No.248-251.
3. Law No.48 of 30.03.2017 on the Criminal Asset Recovery Agency. In: Official Monitor of

the Republic of Moldova, 19.05.2017, No.155-161.
4. Law No.4 of 05.02.2026 on the Use for Social Purposes or in the Public Interest of Confiscated Assets (promulgated by Decree No.540-X). In: Official Monitor of the Republic of Moldova, 26.02.2026, No.96-99.
5. Decision No.6 of 16.04.2015 on the Constitutionality Control of Some Provisions in the Criminal Code and Criminal Procedure Code (extended confiscation and illicit enrichment)
6. 6. GUIDE on Conducting Parallel Financial Investigations (updated version 06.04.2026), annex to the General Prosecutor's Order No.48/11 of April 06, 2026.
7. 7. Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on Asset Recovery and Confiscation. Available: http://data.europa.eu/eli/dir/2024/1260/oj accessed on April 19, 2026.
8. 8. Analytical study regarding the mechanisms of asset recovery and confiscation in the Republic of Moldova. Pedro Gomes Pereira/June 2016. Available: https://www.undp.org/moldova/publications/analytical-study-mechanisms-asset-recovery-and-confiscation-moldova (accessed April 19, 2026).
9. 9. 2025 Crypto crime trends: illicit volumes portend record year as on-chain crime becomes increasingly diverse and professionalized from Chainalysis. Available: https://www.chainalysis.com/blog/2025-crypto-crime-report-introduction/ (accessed April 19, 2026).
10. 10. Dirty assets: the Silver Notice hits organized crime in its pocket. Available: https://www.interpol.int/en/Resources/INTERPOL-Spotlight/Spotlight-Issue-1-Organized-Crime/Innovation-Silver-Notice (accessed April 19, 2026).
11. 11. Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, and amending Regulations (EU) No.1093/2010 and (EU) No.1095/2010 and Directives 2013/36/EU and (EU) 2019/1937. Available: http://data.europa.eu/eli/reg/2023/1114/oj (accessed April 19, 2026).
12. 12. https://www.carin.network (accessed April 19, 2026).
13. 13. https://egmontgroup.org (accessed April 19, 2026).
14. 14. Decision Case Cosovan v. Republic of Moldova (No.2, Application No.36013/13). Available: https://agent.gov.md/wp-content/uploads/2025/01/hotararea-Cosovan-nr.-2-traducere-RO.pdf.

CZU: 351:352 **DOI: https://doi.org/10.5281/zenodo.20917293**

METHODS OF ACQUIRING AND EXTINGUISHING PROPERTY RIGHTS IN THE PUBLIC DOMAIN

Carolina BELEAEV,
PhD Candidate,
Lawyer, City Hall Drochia,
Republic of Moldova
ORCID: 0009-0002-8808-3615

Abstract

Membership in the public domain is offered either by the nature of the property or by the will of the legislator, and the acquisition and extinction of the ownership right of the holders in the public domain is carried out in specific ways, regulated by law – with the mandatory observance of the legal characteristics (the inalienability, the imprescriptibility and the inessibility thereof).

The modalities of acquiring the right of ownership in the public domain of the state or administrative-territorial unit, to be investigated, are: public acquisition; the transfer of some goods from the private domain of the state or of the administrative-territorial unit in the public domain thereof; other ways stipulated by the law such as: accesion, confiscation, sale-purchase or exchange made for a cause of public utility.

And the ways of extinguishing the right of property in the public domain to be discussed in the following are: the destruction of the good, the transition from the public domain to the private domain, the cessation of the use or public interest. All the ways of acquiring and extinguishing the property right mentioned above, necessarily require strict compliance with the legal provisions – public domain goods having a special legal regime applicable.

Keywords: public domain, acquisition of ownership, extinction of ownership, expropriation, public use, public utility, public acquisition.

MODURILE DE DOBÂNDIRE ȘI DE STINGERE A DREPTULUI DE PROPRIETATE ÎN DOMENIUL PUBLIC

Abstract

Apartenența la domeniu public este oferită fie de natura bunului fie de voința legiuitorului, iar dobândirea și stingerea dreptului de proprietate a titularilor în domeniul public se realizează prin modalități specifice, reglementate de lege – cu respectarea obligatorie a caracterelor juridice (inalienabilitatea, imprescriptibilitatea și insesizabilitatea acestora).

Modalitățile de dobândire a dreptului de proprietate în domeniul public a statului sau unității administrativ-teritoriale, care urmează a fi cercetate constituie: achiziția publică; trecerea unor bunuri din domeniul privat al statului sau al unității administrativ-teritorială în domeniul public al acestora; alte moduri prevăzute de lege cum ar fi: accesiunea, confiscarea, vânzarea-cumpărarea sau schimbul făcut pentru o cauză de utilitate publică.

Iar modalitățile de stingere a dreptului de proprietate în domeniul public care urmează a fi discutate în cele ce urmează constituie: pieirea bunului, trecerea din domeniul public în domeniul privat, încetarea uzului sau al interesului public. Toate modalitățile de dobândire dar și de stingere a dreptului de proprietate menționate supra, în mod obligatoriu necesită realizarea în strictă conformitate cu prevederile legale – bunurile domeniului public având un regim juridic special aplicabil.

Cuvinte-cheie: domeniu public, dobândirea dreptului de proprietate, stingerea dreptului de proprietate, expropriere, uz public, utilitate publică, achiziție publică.

Introduction. The public domain constitutes those goods, public or private, by their nature or express provision of the law, must be preserved and transmitted to future generations, representing values intended to be used in the public interest, directly or through a public service, and are subject to an administrative regime, respectively a mixed regime, in which the regime of public power is decisive, these goods being owned or, where appropriate, owned in the protection of legal persons governed by public law [1, p.53].

The importance of the research of the subject on the ways of acquiring and extinguishing the right of property in the public domain derives from the essential role that this right has in the organization and functioning of the state and administrative-territorial units, as well as in ensuring the satisfaction of the public interest.

The legal regime of the public domain presents distinct peculiarities to private property, being characterized by inalienability, imprescriptibility and inalienability, which imposes special rules by the birth and termination of this right.

In this context, the analysis of ways of acquiring and extinguishing public property rights is necessary for the understanding of the legal mechanisms by which goods are integrated into the public domain or, where appropriate, removed from this legal regime.

Methods and materials applied. In the elaboration of this publication, theoretical and normative materials were used. The research methodology used to study the ways of acquiring and extinguishing property rights in the public domain is based on a set of scientific methods specific to the legal field, which allow the analysis, interpretation and systematization of the applicable legal norms.

In the process of elaboration of the work, the following research methods were mainly used: *the juridical-dogmatic method* – through which the legal norms governing the legal regime of public property were analyzed, as well as the ways of acquiring and extinguishing this right; *the logical method* – used for formulating legal conclusions and arguments, as well as for the correct interpretation of the legal norms.

The purpose of this paper is the legal analysis, the study of different theoretical aspects of the topic addressed and the analysis of the legal norms governing the acquisition of the right of ownership, as well as the celke extinguishing the right of ownership of the public domain owners.

Discussion and results obtained. The area of public goods may be subject to change. This would mean that some goods that are part of the private domain may pass into the public domain, and some public domain goods may disappear or pass into the private domain.

At the legislative level, an express enumeration for the acquisition of the right of ownership is provided, but namely for territorial units, in Article 2 of the Law No.523/1999 on Public Ownership of Territorial Administrative Units, in which provides the following ways:

a) By natural means;

b) By public procurement, carried out under the law;

c) By transmission to public property of the administrative-territorial unit of the public property of the state or by transmission of public property of one administrative-territorial unit in the public property of another;

d) By expropriation for a cause of local public utility;

e) On the basis of the decision of the court;

f) By donations or by connections accepted by the board of the administrative-territorial unit;

g) By obtaining incomes and goods under the law;

h) Following the renunciation of the right of ownership of immovable property in the manner established by the legislation in force;

i) Following the implementation of public-private partnership projects.

The right of public property, as a whole, is acquired through specific ways provided by law, focused on the general interest.

The main ways we want to highlight are: *public procurement*; *the transfer of goods from the private domain of the state or the administrative-territorial unit to the public domain*; *other ways provided by law such as*: *accession*, *confiscation*, *sale-purchase or exchange made for a cause of public utility*.

In accordance with the provisions of the new Law No.325/2025 on public procurement, public procurement constitutes the acquisition, by means of a public procurement contract, of goods, services or works by one or more contracting authorities from economic operators selected by these authorities, regardless of whether the goods, services or works are intended for a public purpose or not.

For the purposes of the topic addressed, we consider it appropriate to intervene with the provision of a succinct, clearer notion. Thus, public procurement, as a way of acquiring the right of ownership in the public domain, constitutes the sum of all procedures, under the law, by which a contracting authority (primary, government, state institution) acquires (procurator), by means of a contract – goods, works or services from private sector economic operators, using public money to meet public needs.

Therefore, through a special procedure, which requires strict compliance, certain public goods of public utility can be purchased from the state budget or the local public budget (for example, a bus – for the provision of local transport services).

Expropriation for a cause of public utility is another way to pass a good into the public domain. Thus, according to the provisions of the Law on expropriation for a cause of public utility No.488/1999 – expropriation for a cause of public utility constitutes the transfer of goods and property rights from private property to public property, the transfer to the state of public property belonging to an administrative-territorial unit or, as the case may be, the ceding to the state or to an administrative-territorial unit of patrimonial rights for the purpose of performing works for public utility of national interest or local interest, under the conditions provided by law, after a fair and prior compensation.

As an eloquent example would be the case when it is planned to build a road of national interest that according to the project would pass over the private property of a physical person. In this case, in compliance with all legal requirements, the good of the natural person passes from the private domain into the public domain of the state.

This special process of forced acquisition of immobile goods was created by the French Revolution, which proclaimed the right of property as a natural and intangible right, opposing it to the sovereignty of the state and introducing the principle that no one can be expropriated except for a cause of public utility and only after just and prior compensation. The positive legislator was obliged to establish certain principles which would be a guarantee for private property against abuse and arbitrariness of the administration [3, p.76].

The transfer from private property to public property by means of donation documents. This way, although rare, is not excluded, given that any natural or legal person can donate a good to the state or administrative-territorial unit. For example, a legal entity could donate a special truck to a municipality needed in the sanitation sector of the locality.

The transfer of some goods from the private domain of the state or the administrative-territorial unit into the public domain of the state. Although less frequently found in practice, however, is also a way of acquiring the right of ownership in the public domain. The condition, as in the rest of the cases, is that the property is taken over to serve local or national public use or interest. Therefore, the effect received as a result of the application of this process constitutes the transition of the good from an economic management to a special protection regime according to the legislation in force.

Accession is another way provided by law by which a good and the right of ownership over it may be in the public domain.

According to the doctrinaire Baies Sergiu by "accesion" means the union of one good with another, that is, the union of two or more things to create one [2, p.70].

The Civil Code regulates two types of accessibility: furniture and real estate.

➢ *Real Estate Accesion* – can take place in two ways: *natural* – resulting from events, natural phenomena, without the need for human activity and involvement; and *artificial* – resulting from direct human intervention on the good (regulation of Articles 521-522 Civil Code of the RM).

In the case of the approached topic, *real estate accesion* is the closest to being a way of passing a good in the public domain. For example, in the event of a river bank breaking off from the edge of a river belonging to a natural person, and as a result of natural phenomena (calamities), a portion of the previously steep occurred adhesion to a land in the public domain belonging to the state or administrative-territorial unit.

Confiscation is a way of acquiring the right of ownership by the state as the proper holder. This method is the transfer of a person's good into public property. The rule indicates that confiscation occurs only as a result of the commission of a crime or contravention, being a safety measure or sanction for the perpetrator, only on the basis of a court decision or in cases provided by law, by an administrative act (as the case may be). The seizure may be special (it applies to property that has served to commit a crime, resulted as a result of the commission of a crime or was acquired by committing the crime) and extensive (applicable in a criminal trial, usually allowing for the confiscation of property that exceeds the income officially declared by the person).

It is important to note that this way of acquiring ownership is characteristic only for the state as a public domain holder.

Confiscation also has a preventive and sanctioning role, contributing to deterring the commission of illegal acts and restoring the rule of law. At the same time, this reflects the intervention of the state in the protection of fundamental social values, through forced transfer of goods into public patrimony.

The sale-purchase or exchange made for a cause of public utility are also ways of acquiring a good and the right of ownership of the public domain owner, but as procedures include typical, simpler, similar actions to those in the private sector. Thus, through a simple sale-purchase contract or exchange contract, the state, or administrative-territorial unit may pass a utility or public use good in the public domain.

The basic rule for buying and selling is always public procurement, however, the law always provides a threshold of an amount in which public domain owners can buy the good without applying to the public procurement procedure.

For an exchange contract, special provisions are not provided for in the public domain, and it can be applied very simply, only in compliance with all the general legal provisions.

The natural way – is also a way of acquiring property rights in the public domain, but

the legislator does not intervene with certain specifications in this way, probably because it is a natural way to acquire the right on a good for the state or administrative-territorial unit in respect of riches of any kind which are formed or will be formed naturally in its territory or in the basement of the country.

Overall, the above-mentioned modalities are most applicable in practice ways of acquiring ownership in the public domain.

Next, we want to reiterate the so-called golden rule - public property is inalienable, imprescriptible and unnoticeable, so its termination can only take place under the strict conditions of the law.

In particular, the right of public property may cease, by the following means: *the destruction of the good, the passage from the public domain into the private domain, the cessation of use or public interest.*

The loss of the good – if a good in the public domain perishes in its materiality, regardless of the cause (legal or illegal), the right of ownership is extinguished given the fact that the property does not exist in nature.

The transition from the public domain to the private domain of the state or the administrative-territorial unit – is another way of ceasing the ownership right of the public domain owner.

This method requires strict observance of a special procedure, and the basis for the transition from the public domain to private can only be an administrative act: government decision for the public domain of the state and decisions of local/rational councils for the public domain of administrative-territorial units.

In the context of this approach, from the existing legal framework, it would be appropriate to mention Law No.121/2007 on the Administration and De-Etatization of Public Property.

In accordance with the provisions of the above-mentioned law on the *de-etatization of public property activity* that includes the transmission of public patrimony in private property under the present law (privatization), as well as the transmission in concession, fiduciary administration, other activities aimed at diminishing the participation of the state or of administrative-territorial units in the administration of public property.

Termination of use or public interest – another way to terminate the right of ownership of the state/administrative-territorial unit, which is applicable to if the good no longer serves an interest of the community, is no longer used by the public or no longer fulfils its intended purpose – in accordance with the provisions of Article 471 of the Civil Code. An eloquent example of this method outlines the constructions and land on which the constructions from many administrative-territorial units that were previously used as public baths by the inhabitants of the respective unit were located. Thus, with the development and modernization of housing-communal services, as well as the evolution of technologies that make present in each home of personal bathrooms – the respective immobile goods have lost its quality of 'use and public interest'.

However, this state of affairs requires a finding by an administrative act anyway – with the passing of the respective public domain assets into the private domain – normally in the same act.

In practice, identifying the exact timing of the end of public use may raise difficulties, which is why an objective administrative assessment based on criteria such as usability, social utility and maintenance costs of the asset is necessary.

Public interest is the fundamental criterion governing both the acquisition and extinction of the right of public property, being the element of balance between the needs

of the community and the efficient management of the public patrimony.

In doctrine and practice, it is emphasized that the legal regime of goods belonging to the public domain is closely related to the notion of public utility, this being the essential criterion of delimitation between goods owned by the public and private property.

Thus, a good is maintained in the public domain as long as it effectively serves a general interest, be it local or national. When this purpose disappears, it is justified to modify the legal regime of the good, by passing it in the private domain, under the law.

At the same time, it should be noted that the management of public domain goods implies not only a right, but also an obligation of public authorities to ensure their conservation, protection and rational exploitation. In this respect, the authorities do not act in a discretionary manner, but within the limits strictly established by the legal norms, any deviation from these rules may attract their legal liability, under the law.

Another important aspect is the fact that the modification of the legal regime of public goods must be justified not only legally, but also economically and socially. In other words, the mere temporary lack of use of a good is not sufficient to justify the cessation of public use, and a complex analysis of the appropriateness and necessity of maintaining it in the public domain is necessary. This approach ensures the stability of the public patrimony and prevents any arbitrary or unfounded decisions.

Also, as regards the mechanisms for acquiring and extinguishing public property rights, it is noted that they are closely correlated with the evolution of public policies and with the needs of society. The state intervenes through normative and administrative acts in order to permanently adapt the structure of the public patrimony, according to the priorities of economic, infrastructural and social development.

Last but not least, it should be pointed out that the principles governing public property — inalienability, imprescriptibility and inalienability — are not mere theoretical rules, but essential legal guarantees for protecting the interest of the community. These principles limit the possibility of alienating public goods and ensure that they remain permanently affected by the purpose for which they were created or acquired.

Consequently, the analysis of ways of acquiring and extinguishing property rights in the public domain reveals a necessary balance between the stability of the public patrimony and the flexibility of its administration, a balance which is achieved through the legal norms and the intervention of the competent public authorities.

Conclusions. The analysis of the ways of acquiring and extinguishing property rights in the public domain highlights the complex and dynamic character of this legal regime, oriented exclusively to the satisfaction of the public interest and the permanent adaptation of the state patrimony and of the administrative-territorial units to the needs of the society.

The acquisition of the right of public property is carried out in ways strictly regulated by law, such as public procurement, expropriation for public utility, accession, confiscation, donations, exchange, sale-purchase under the law, as well as the transfer of private property into the public domain. These legal instruments are intended to ensure the formation and consolidation of public assets in order to achieve the general interest.

At the same time, the extinction of the right of public property occurs exclusively under the conditions provided by law, by the destruction of the good, its passing into the private domain, the termination of its use or public interest or by other expressly regulated modalities.

These mechanisms confirm the special character of public property, governed by the principles of inalienability, imprescriptibility and inalienability.

In the context of those analyzed supra, we intervene with the proposal of lege ferenda, which provides a clear identification of the criteria of appreciation of „public interest and use" and identification of the criteria when it can be found that the use and public interest have ceased to be present – as the purpose of avoiding divergences in practice.

In conclusion, the legal regime of public property reflects the importance of a rigorous and responsible administration of state assets, and the improvement of the normative framework within the meaning of *de lege ferenda proposal* would contribute to strengthening legal certainty and better protection of the public interest.

Bibliographical references

1. Iorgovan A. Drept Administrativ. Tratat Elementar. Vol. 3, Bucureşti: Editura Proarcadia, 1993, 186 p.
2. BAIEȘ S., ROȘCA N. Drept civil. Drepturile reale principale. Vol.2. Chișinău: Tipografia centrală, 2005, 302 p.
3. Bălan Emil. Introducere în studiul domenialității. Editura All Beck, 2004, 119 p.
4. Trăilescu Anton. Drept administrativ. Tratat elementar. Editura ALL BECK, 2002, 375 p.
5. Tarangul E.D. Tratat de Drept administrativ roman. Tipografia Glasul Bucovinei, Cernăuți, 1944, 685 p.
6. Chelaru Eugen. Administrarea domeniului public și a domeniului privat, ediția 2. Editura C.H.Beck, 2008, 154 p.
7. Codul Civil al Republicii Moldova nr.1107 din 06.06.2002. În: Monitorul Oficial al Republicii Moldova, 01.03.2019, nr.66-75, art. 132. Disponibil: https://www.legis.md/cautare/getResults?doc_id=150498&lang=ro#.
8. Legea cu privire la proprietatea publică a unităților administrativ-teritoriale nr.523/1999. Disponibil: https://www.legis.md/cautare/getResults?doc_id=143274&lang=ro.
9. Legea privind administrarea și deetatizarea proprietății publice nr. 121 din 04.05.2007. Disponibil: https://www.legis.md/cautare/getResults?doc_id=152778&lang=ro.
10. Legea nr.29 din 05.04.2018 privind delimitarea proprietății publice. Disponibil: https://www.legis.md/cautare/getResults?doc_id=150232&lang=ro#.

CZU 343.344 **DOI: https://doi.org/10.5281/zenodo.20917493**

THE ILLEGAL CIRCULATION OF FIREARMS AND AMMUNITION IN THE CRIMINAL LAW OF THE REPUBLIC OF MOLDOVA: AN ANALYSIS OF THE MODALITIES OF ACQUISITION, MANUFACTURING, REPAIR, MODIFICATION, AND ILLEGAL COMMERCIALIZATION PROVIDED UNDER ARTICLE 290 OF THE CRIMINAL CODE OF THE RM

Alexandru STOLEARENCO,
PhD Candidate,
"Ştefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID 0000-0001-9484-0796

Abstract

The persistence of criminal phenomena associated with the illegal circulation of firearms and ammunition in the Republic of Moldova highlights the need for an in-depth analysis of the factual modalities through which their legal regime is violated.

In this context, the illegal acquisition, manufacture, repair, modification of construction or marking, and commercialization of firearms, ammunition, and their essential components represent distinct forms of manifestation of the illicit arms circuit, capable of generating increased risks to public order and state security. The complexity of these conducts requires the identification of their defining elements and the establishment of clear legal criteria for distinguishing between the normative modalities provided under Art. 290 CC RM, in order to avoid misclassification and ensure a uniform application of criminal law.

At the same time, the latent nature of these modalities necessitates the clarification of their essential features, with a view to strengthening the interpretative framework and enhancing the effectiveness of mechanisms for preventing and combating arms-related criminality in a criminogenic context marked by the diversification of this phenomenon.

Keywords: firearms, ammunition, acquisition, manufacture, commercialization, illicit circulation.

CIRCUITUL ILEGAL AL ARMELOR ȘI MUNIȚIILOR ÎN DREPTUL PENAL AL REPUBLICII MOLDOVA: ANALIZA MODALITĂȚILOR DE PROCURARE, FABRICARE, REPARARE, MODIFICARE ȘI COMERCIALIZARE ILEGALĂ PREVĂZUTE LA ARTTICOLUL 290 CP RM

Abstract

Persistența fenomenului infracțional asociat circulației ilegale a armelor și munițiilor în Republica Moldova relevă necesitatea unei analize aprofundate a modalităților faptice prin care se realizează încălcarea regimului juridic al acestora.

În acest context, procurarea, fabricarea, repararea, modificarea construcției ori a marcajului și comercializarea ilegală a armelor, munițiilor și componentelor esențiale ale acestora constituie forme distincte de manifestare a circuitului ilegal al armelor, susceptibile de a genera riscuri sporite pentru ordinea publică și securitatea statului, iar complexitatea acestor conduite impune identificarea elementelor definitorii și stabilirea unor criterii clare de delimitare juridico-penală între modalitățile normative prevăzute la art. 290 Cod penal al Republicii Moldova, în vederea evitării confuziilor de încadrare juridică și a asigurării unei aplicări unitare a legii penale.

Astfel, o atenție deosebită revine acestor modalități, caracterizate printr-un grad ridicat de latență, ceea ce impune clarificarea trăsăturilor lor definitorii în vederea consolidării cadrului interpretativ și eficientizării mecanismelor de prevenire și combatere a criminalității asociate armelor, într-un context criminogen marcat

de diversificarea formelor de manifestare a fenomenului infracțional.

Cuvintele-cheie: arme, muniții, procurare, fabricare, comercializare, circuit ilegal.

Introduction. In the context of the growing criminal phenomenon associated with the illegal circulation of firearms and ammunition, the criminal law analysis of the factual modalities through which their legal regime is violated acquires particular importance. The diversification of criminal manifestations in this field, as well as the use of increasingly sophisticated methods for the acquisition, manufacture, modification, or illegal commercialization of firearms, require a reassessment of the existing interpretative framework and its adaptation to current criminogenic realities.

In this regard, the applicable legislation and specialized literature provide multiple approaches concerning the content and delimitation of the normative modalities of offenses related to the illicit arms circuit, highlighting the interpretative difficulties generated by the complexity of such conduct. At the same time, judicial practice reveals the existence of certain inconsistencies in the process of legal classification, mainly determined by the insufficient clarity of the criteria for distinguishing between the different modalities provided by criminal law.

Therefore, this study is based on the hypothesis that, under the specific conditions of the Republic of Moldova, clarifying the defining features of the factual modalities regulated by Article 290 RM Criminal Code and establishing rigorous criteria for their legal delimitation may significantly contribute to ensuring a uniform application of criminal law and to enhancing the effectiveness of mechanisms for preventing and combating criminality associated with illicit arms trafficking.

Methods and materials applied. This research is based on a doctrinal and normative analysis of the criminal law regulations governing the illicit circulation of firearms and ammunition, corroborated with the examination of relevant judicial practice in the Republic of Moldova. The study employs comparative, systemic, and interpretative methods in order to highlight the specific features of the factual modalities of the offense provided under Article 290 Criminal Code and to distinguish them from other forms of illicit conduct.

The materials analyzed include specialized doctrinal works, national legal provisions, and relevant judicial decisions concerning the interpretation and application of the applicable legal framework. The research focuses on identifying the defining elements of each normative modality and on establishing clear legal criteria for their delimitation, with a view to ensuring a uniform interpretation of the criminal law provision.

Discussions and results obtained. The analysis of the factual modalities through which the objective side of the offence provided for in Article 290 CC RM is carried out reveals the complex and multifaceted nature of unlawful conduct in the field of the illicit circulation of firearms and ammunition, while the diversity of these modalities, ranging from the acquisition and manufacturing of firearms to their repair, modification of construction or marking, and illegal commercialization, reflects not only the distinct stages of introducing and maintaining firearms in the illicit circuit, but also the varied mechanisms through which this criminal phenomenon manifests itself, thus demonstrating that each normative modality has its own distinct criminal-law content, determined by the specific nature of the material acts, the moment of intervention in the circulation of firearms, and the purpose pursued by the offender.

In this regard, the factual modality of *acquiring firearms* occupies a distinct place within the structure of the objective side of the offence provided for in Art. 290 of the

Criminal Code, as it concerns the initial moment of obtaining control over the material object and, unlike carrying or possession, which presuppose the exercise of an already established control, acquisition marks the entry of the firearm or ammunition into the sphere of the offender's possession.

In the jurisprudential and normative understanding [3], the acquisition of firearms, cold weapons, ammunition, or explosive substances is defined as obtaining them through various means such as purchase, receipt free of charge or as a donation, exchange, debt settlement, pledge, reward, loan, lease, or even finding, while the criminal nature of the act is not determined by the legal form of the transaction, but by the absence of a legal framework authorizing such acquisition, namely the lack of authorization from the competent authorities.

In the same vein, the doctrinaire Brînză S. emphasizes that the acquisition of possession of a firearm or of goods following an illicit transaction, whether onerous or free buy, exchange, receive as a gift, on account of a debt, as a loan, as a reward or as a pledge to guarantee a legal obligation, thus highlights the acquisition of a legal essence. possession over the asset, regardless of the apparent title of acquisition [2, p.632].

A detailed approach to the notion of "procurement" is also found in Russian criminal doctrine, in the context of the interpretation of Art. 222 of the RF Criminal Code, a norm close in structure and purpose to Art. 290 of the RM Criminal Code. Thus, the author Kokin D. shows that by procurement, as an illegal act, we must understand those actions as a result of which firearms, their essential parts or ammunition are transferred into the illegal, temporary or permanent possession or use of the person who meets the characteristics of the subject of the crime [13, p.93].

In this sense, procurement includes purchase in violation of the legal order, receipt as a donation, exchange for goods or values, transmission as a loan, receipt on account of a debt, as payment for work performed or services performed, as well as any other form of transfer of possession. At the same time, it is emphasized that this sphere also includes the illegal procurement and temporary acquisition of weapons for various purposes, including criminal ones, as well as the appropriation of weapons, their component parts or ammunition found.

On the other hand, in order to clearly distinguish between licit and illicit conduct, it is necessary to delimit the notion of illegal procurement from that of legal procurement. In this regard, the author Ulianovschi X., analyzing this factual modality, shows that legal procurement is understood as the purchase of firearms and ammunition from specialized stores, duly authorized by the specially authorized body, under the conditions of the existence of the procurement permit issued to the holder [10, p.564].

In the absence of such an authorization title, any form of obtaining the weapon or ammunition, even an apparently benign one, such as accepting them as a gift or appropriating a found asset, is likely to meet the constitutive elements of the crime, to the extent that the person keeps the asset without immediately handing it over to the competent authorities or without initiating the legal authorization procedure.

However, from the perspective of criminal policy, the legislator does not wait for a concrete prejudicial result to occur, but sanctions in advance the moment the weapon is introduced into the unauthorized possession circuit, considering that the very acquisition of such an object without right creates a real and objective state of danger for the social relations that ensure public security in the field of the weapons and ammunition regime.

Another factual modality provided for by Art. 290 Criminal Code of the Republic of Moldova (CC RM) is the manufacture of weapons, essential components and ammunition,

which, although less frequently encountered in judicial practice, this conduct has a particular legal relevance, as it already marks the very initial stage of the appearance of the material object of the crime, namely the moment of creating the technical means capable of functioning as a weapon or ammunition.

From a legal and criminal perspective, manufacturing means the production or realization, by industrial or artisanal means, of weapons, ammunition or their essential components, by making assemblies or subassemblies which, through integration, acquire the ability to fire, produce an explosion or cause injuries, the notion including not only the complete realization of a weapon, but also the elements without which the mechanism could not function according to its technical purpose.

In international law, the concept of „illicit manufacturing" is outlined in the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. According to this instrument, illicit manufacturing involves the production or assembly of firearms or their components without a license or authorization issued by the competent authority of the state in which the activity takes place, as well as without compliance with marking obligations [6].

In the same sense, the Russian doctrine emphasizes that in the framework of industrial production, the manufacture of firearms is carried out exclusively on the basis of permits and licenses issued by state bodies, within specialized enterprises, with the involvement of gunsmiths and qualified personnel. The production process is a technically complex one, assuming compliance with rigorous standards of design, processing and assembly, which is why the state reserves control over this activity.

In this respect, manufacturing is clearly distinguished from acquisition, as while acquisition presupposes obtaining possession of an already existing weapon, manufacturing entails the very creation of the material object, namely the introduction into circulation of a new weapon or ammunition, a distinction which justifies the separate treatment of these modalities within the structure of the objective side of Art. 290 CC RM, with manufacturing representing the original moment of the physical existence of the object that may subsequently be carried, possessed, commercialized, or appropriated.

Manufacturing, like the other factual modalities provided for in Art. 290 Criminal Code (except for theft), has a formal character, the crime being considered consummated from the moment of obtaining the finished product, that is, when the weapon, component part or ammunition acquires the functional ability for which it was made, and since the norm does not condition liability on the production of a subsequent material result, the simple completion of the technical process of creation is sufficient to meet the material element.

From this perspective, the question of delimiting the phase of the attempt arises in the hypothesis in which the direct manufacturing process is interrupted for reasons independent of the perpetrator's will. We consider that, to the extent that the subject has begun the execution of the manufacturing acts and these are directly part of the achievement of the material element of the crime, but the finished product was not obtained for reasons beyond his will (for example, the intervention of law enforcement agencies), we are in the presence of a punishable attempt, within the meaning of the general rules regarding the phases of the crime.

Repairing weapons, essential components and ammunition constitutes one of the normative ways of committing the crime provided for in Art. 290 CC RM, which, compared to other conduct such as illegal carrying or possession, is characterized by a higher level of latency, as technical interventions on weapons are usually carried out in private

spaces or in restricted environments, being difficult to detect in the absence of specialized investigative activities [11, p.35].

From a legal-criminal perspective, repair is understood as the activity aimed at restoring a weapon or ammunition that has technical defects, wear or alterations to its initial parameters to a functional state, and in a technical-legal sense, it involves intervention on the mechanisms, parts or component assemblies, in order to eliminate defects and restore lost functional qualities, which involves the restoration, replacement or adjustment of damaged elements, so that the object regains its suitability for use according to its technical purpose, without leading to the emergence of a new object, but to the regaining of the useful properties of the existing one.

In this regard, we highlight the findings of the author Chirița V., who, analyzing the objective side of the norm of Art. 290 CC RM, mentions that repair involves a set of operations performed on defective weapons to restore them to a condition that ensures their safe operation according to their intended purpose, without modifying their construction [2, p.141].

In a similar view, Russian criminal doctrine emphasizes that repair consists, on the one hand, in eliminating defects in firearms, their essential parts and related devices, including those intended to change the firing mode, and on the other hand, in actions that restore the striking properties of the weapon or the ability to use its components within certain weapons systems. Also, being qualified as repair and adaptation of the weapon or its components to the individual needs of the owner, when such interventions influence the technical or functional parameters of the object [17, p.48].

Special legislation [4] stipulates that the repair of weapons is permitted exclusively in authorized workshops, regardless of their form of ownership, which have a license and authorization issued by the competent authorities. Outside this legal framework, any intervention aimed at restoring the functionality of a weapon or ammunition constitutes a form of illegal repair, likely to meet the elements of the objective side provided for in Art. 290 Criminal Code of the Republic of Moldova.

In this logic, repair is conceptually distinguished from other technical interventions on weapons, as it does not aim to create a new object, but to restore the existing one to its functional parameters, an essential aspect for the correct delimitation of this factual modality within the framework of the analyzed criminal norm.

Next, we will analyze separately another way of achieving the objective side provided for in Art. 290 of the Criminal Code, namely, modifying the construction or marking of weapons, methods that will be examined separately.

Regarding the modification of the construction, this involves changing or transforming, without the appropriate authorization or in violation of the procedure established by law, the essential parts or components of the weapon, in such a way as to create the possibility of using it for purposes other than those provided by the manufacturer or under conditions other than those permitted by the applicable legal regime.

This category includes, for example:

- Cutting the barrels of long weapons to a length below the legally permitted limit, an intervention that modifies both the ballistic parameters and the legal category of the weapon;
- Adapting weapons to mount devices to reduce the noise produced when firing, which influences the technical characteristics and the way of use;
- Modifying the firing mechanism in order to carry out serial firing, by transforming a semi-automatic weapon into one capable of automatic fire;
- Modifying the construction of weapons with a folding stock, so that firing is also

possible in the folded position, which alters the operating conditions provided by the manufacturer;

• Replacing or modifying the firing pin, the extractor claw or the front wall of the bolt, interventions that affect the functioning of the firing mechanism;

• Replacing the barrel or modifying its channel, including changing the caliber or internal structure, with a direct impact on ballistic performance.

Thus, in a detailed analysis, it is observed that all these actions have in common the fact that they affect the technical structure of the weapon at the level of essential elements, determining the modification of the functional parameters or the applicable legal regime.

In this continuity, what is essential is not only the material act of the intervention, but the fact that it is carried out without the necessary authorization or in violation of the procedures established by law.

However, it should also be noted that not every intervention on a weapon constitutes modification in the criminal sense. Activities such as lubricating or cleaning the weapon, adjusting or replacing the handle, the front or rear sight, the handle plates, the groove, the stock, the safety spring, or other similar actions performed on a functional weapon do not constitute violations of the law, to the extent that they do not alter the essential technical structure and do not change the purpose or legal regime of the weapon, given that these interventions fall within the scope of permitted maintenance or customization, without affecting the fundamental constructive characteristics.

Therefore, modification of the construction of weapons, within the meaning of Art. 290 CC RM, must be understood as an unauthorized intervention on essential structural elements, capable of changing the technical parameters or functional purpose of the weapon, thus distinguishing itself from simple maintenance or adjustment operations that do not affect the essence of the mechanism.

This normative method was retained in the following case from judicial practice: *R.C. during the period from May 20 to June 18, 2015 in the village of Misovca, Ialoveni county, manufactured from the smooth-bore hunting weapon, with the series and no. "Y00848", into the atypical sawn-off weapon, by modification, by cutting the barrel to 295 mm and the stock, a fact confirmed in the Ballistic Expertise Report, later in the village of Fundul Galbenei, Hincesti county, the same indicated weapon was carried, kept and its ammunition in the amount of three 20-caliber hunting cartridges with centerfire "with machine guns" diameter of 4 mm, without the appropriate authorization. Through his intentional actions, Rusu Cristian committed the carrying, keeping, manufacturing of the firearm and ammunition without the appropriate authorization, a crime provided for by art. 290 paragraph (1) Criminal Code* [8].

Thus, those analyzed in the case at hand confirm the relevance of the delimitation between permitted technical interventions and those that constitute modifications in a criminal sense, highlighting that any unauthorized intervention on the essential structural elements of the weapon, capable of altering its technical parameters or destination, attracts the incidence of criminal liability, even in the absence of a subsequent use of the weapon for criminal purposes.

Next, in order to establish the specifics of the modification of the marking considered as an illicit act, it is necessary to specify that this term is to be understood as the set of identification elements such as the series, code, industrial symbol or other distinctive signs that are applied to the metal surface of the weapon by mechanical, laser or electrochemical engraving or printing, at a technical depth sufficient to ensure their durability, namely at a minimum level of approximately 0.076 mm.

Therefore, in order to ensure the identification and traceability of each firearm, the UN Firearms Protocol imposes on states the obligation to ensure the unique marking of each firearm at three essential moments: at the time of manufacture, at import, and at the transfer from state stocks to the civilian circuit.

For this reason, the specialized doctrine emphasized that the applied marking must meet certain fundamental technical requirements, namely, according to the opinion expressed by N.S. Kudinova, the marking must allow for the verification and identification of the object, have a long term of existence, be easily detectable, demonstrate resistance to aggressive environments and abrasive actions, as well as ensure the possibility of forensic identification, thus demonstrating that the marking is designed to be durable, legible and susceptible to expertise, precisely to prevent the integration of the weapon into an anonymous illicit circuit [15, p.46].

In this context, marking modification involves intentional intervention on these identification elements, with the aim of altering or suppressing the possibility of individualizing the weapon. In practice, this conduct can take various forms, such as: erasing or erasing the serial number, partial alteration of numbers or letters, re-engraving or overwriting with other data, applying a false marking, replacing the plate or the element on which the number is printed, as well as the deliberate destruction of the identification area.

Therefore, the modification of the marking of weapons within the meaning of Art. 290 RM Criminal Code, must be understood as any intentional and unauthorized intervention on the identification elements, capable of compromising the traceability and individualization of the weapon, this conduct being likely to facilitate its integration into the illegal circuit and to hinder the activity of criminal prosecution bodies.

Continuing the analysis of the normative modalities provided for in Art. 290 CC RM, it is necessary to examine separately the illegal trade in weapons or ammunition, as well as their essential components.

Commercialization means the introduction into the civilian circuit of weapons, ammunition or essential parts through acts of alienation for a fee or free of charge, carried out systematically or occasionally, regardless of whether they aim to obtain a material benefit or not.

Although, at first glance, the notion of trade would essentially imply the operation of sale-purchase or procurement of goods or services [5], within the meaning of the norm provided for in art. 290 RM Criminal Code, it has a broader scope, covering other equivalent legal forms through which the good is transmitted to another person, such as exchange, gift or other ways of transmitting possession or detention of the respective object.

In this sense, it can be observed that marketing represents the opposite side of the previously analyzed factual modality, namely procurement, the two conducts being, in essence, components of the same legal relationship of transmission of the good, one aiming at its acquisition, and the other at its alienation.

In confirmation of the above, we find relevant opinions in Russian criminal doctrine, where unanimously, several scholars understand by illegal trading of firearms, their main parts and ammunition the action of definitive alienation of these goods into the ownership of other persons as a result of an illicit transaction, whether onerous or free, such as sale, gift, exchange, etc., thus emphasizing that such alienation must be irreversible, unlike situations in which the object is only temporarily transmitted to another person for use or storage [13, p.93; 12, p.103; 14, p.59].

However, we cannot fail to note the position expressed in the national doctrine by the authors S. Brînza and V. Statii, which highlights an important delimitation regard-

ing the legal qualification of such conduct. According to them, viewed as a distinct way of trading weapons, equipping a criminal organization with weapons for the purpose of committing crimes does not attract liability under Art. 290 RM Criminal Code, but is to be qualified according to Art. 284 para. (1) RM Criminal Code [1, p.263], which incriminates the creation or management of a criminal organization.

In such situations, such a purpose is due to the existence of a competition between the general norm and the special norm, since the provision of Art. 284 CC RM expressly includes among the manifestations of criminal activity the provision of the criminal organization with weapons and instruments for committing crimes, which is why, as a consequence, according to the rule enshrined in Art. 116 CC RM, in the event of competition between the general norm and the special norm, the latter applies with priority, since it is in a relationship of logical subordination to the general norm [9, p.193].

Therefore, as a conclusion to what has been said, we also mention the fact that although the illegal trade in weapons, ammunition or their essential components, by its very nature, represents an activity that is difficult to investigate and, in many situations, difficult to demonstrate in terms of evidence, national judicial practice nevertheless knows cases in which such conduct has been found and sanctioned by the courts.

In this regard, by way of example, we mention the following case from judicial practice: *D.I., in circumstances unknown to the criminal investigation body, came into possession of a "TT" model pistol, industrial caliber 7.62x25mm, and an "RPG-18" model anti-tank grenade, which he kept without proper authorization until May 14 and 15, 2014, respectively.*

Subsequently, with the aim of alienating this weapon and ammunition without proper authorization, in order to obtain profit, namely monetary means in the amount of 1,000 euros, which according to the official exchange rate of the National Bank of Moldova is equivalent to the amount of 18,717 lei, on May 14, 2014, in the municipality of Chisinau, he sent a "TT" model pistol to citizen M.M., a journalist within the Organized Crime and Corruption Reporting Program cal.7,62x25mm.

By the actions the Court decides to find D.I. guilty of committing the offense provided for in art. 290 par. (2) letter b) of the Criminal Code of the Republic of Moldova [7].

The analyzed case illustrates the typical mechanism of illegal trafficking, in which unauthorized possession is followed by the introduction of the weapon into the illicit circuit through an act of transmission to a third party, highlighting the staged nature of the conduct and the role of trafficking as an essential link in the dissemination of weapons outside the legal framework.

Conclusions. The findings of the research demonstrate that the current regulation of acts concerning the illicit circulation of firearms and ammunition, although providing a general framework of criminalization, does not in all cases ensure a sufficiently clear delimitation of unlawful conduct, which may lead to divergent interpretations in the process of legal classification. In particular, it has been established that the absence of explicit normative criteria regarding the nature of the intervention on the material object and the moment of its integration into the illicit circuit generates practical difficulties in the uniform application of criminal law.

In this context, the need for a reformulation of the legal provision in a more precise manner, better aligned with current criminogenic realities, is emphasized through the use of clearer legal concepts and by extending the scope of regulation to certain forms of conduct which, although presenting an evident social danger, are not sufficiently explicitly reflected in the legal text. Such a legislative intervention would contribute not only to increasing the predictability of the criminal norm, but also to enhancing its effectiveness

in preventing and combating the analyzed criminal phenomenon.

Bibliographical references

1. Brînza S., Statii V. Tratat de drept penal. Partea specială. Vol. II, Chișinău, 2015, p.632.
2. Chiriță V. Infracțiuni contra securității publice și ordinii publice. Chișinău, 2025, p. 141.
3. Hotărîrea Plenului Curții Supreme de Justiție a Republicii Moldova cu privire la practica judiciară în cauzele penale despre purtarea (portul), păstrarea (deținerea), transportarea, fabricarea, comercializarea ilegală, sustragerea armelor de foc, a muniţiilor sau a substanţelor explozive, păstrarea neglijentă a armelor de foc și a muniţiilor nr.31 din 09.11.1998.
4. Legea nr.130 din 08.06.2012 privind regimul armelor și al muniţiilor cu destinație civilă. În: Monitorul Oficial nr.222-227 din 26.10.2012.
5. Legea nr.231 din 23.09.2010 cu privire la comerțul interior. În: Monitorul Oficial nr.230-237 din 01.10.2021, art. 262.
6. Protocolul împotriva fabricării și traficului ilegale de arme de foc, piese și componente ale acestora, precum și de muniții, adițional la Convenția Națiunilor Unite împotriva criminalității transnaționale organizate, adoptată la New York la 15 noiembrie 2000, din 31.05.2001.
7. Sentința Judecătoriei Buiucani, Dosarul nr.1594/15. Disponibil: https://instante.justice.md/ro/pigd_integration/pdf/C444C1C2-C5A0-E411-8112-005056A5D154 (accesat 15.03.2026).
8. Sentința Judecătoriei Hîncești Dosarul nr.1330/15. Disponibil: https://instante.justice.md/ro/pigd_integration/pdf/F286F958-FF68-E511-8A1B-005056A5D154 (accesat 19.02.2026).
9. Slisarenco I. Calificarea infracțiunilor. Material didactico-științific, Chișinău, 2019, p. 193.
10. Ulianovschi X., Brânza S., Statii V. Drept penal. Partea specială. Vol. II, ediția a II-a, Chișinău, 2005. p. 564.
11. Антонченко В.В. Латентность преступлений, связанных с незаконным оборотом оружия в Дальневосточном федеральном округе. Криминологический журнал Байкальского государственного университета экономики и права. – Иркутск 2009 с. 35.
12. Звягин В.А. О декриминализации изготовления и сбыта холодного оружия // Журнал российского права. №3. Москва 2015 с. 103.
13. Кокин Д.М. Некорыстный оборот оружия: уголовно-правовая и криминологическая характеристика. Диссертация на соискание ученой степени кандидата юридических наук, Санкт-Петербург, 2015, с. 93.
14. Коркин А.В., Харламова А.А. Некоторые вопросы ответственности за незаконный оборот холодного оружия // Вестник Уральского юридического института МВД России. №4. Екатеринбург, 2017, с. 59.
15. Кудинова Н.С. Судебная механоскопическая экспертиза производственнотехнологических следов лазерной обработки и маркировки: дис. ... канд. юрид. наук. Саратов, 2006, с. 46.
16. Латышов И.В., Гарманов В.В. Некоторые вопросы определения способа производства стрелкового огнестрельного оружия. Вестник Казанского юридического института МВД России №1(39), Казань, 2020, с 122.
17. Чистяков А.А. Мажинскис Н. Незаконные изготовление, переделка и ремонт огнестрельного оружия и его основных частей по уголовному законодательству Российской Федерации и Латвийской Республики. Человек: преступление и наказание, Москва, 2018, с. 48.

CZU 343.9 **DOI: https://doi.org/10.5281/zenodo.20917694**

THE ROLE OF PUBLIC POLICIES IN PREVENTING AND COMBATING CRIME

Niki Nicolae POPESCU,
Battalion Commander,
"Alexandru Ioan Cuza" Police Academy, Bucharest, Romania
ORCID: 0009-0004-2926-4103

Abstract

Crime represents a complex and dynamic social phenomenon, influenced by the economic, technological, and cultural transformations of contemporary society. In this context, public policies play a crucial role in preventing and combating criminality, serving as the main instrument through which the state intervenes to ensure public order and safety. This paper aims to analyze the role and effectiveness of public policies in managing crime, highlighting both their preventive and repressive dimensions.

The research methodology is qualitative, based on the analysis of specialized literature, national and international strategic documents, and relevant empirical studies. The study examines the main types of crime prevention policies, namely primary, secondary, and tertiary prevention, as well as control and sanctioning measures. Furthermore, the paper emphasizes the importance of inter-institutional cooperation and partnerships between the public and private sectors in the effective implementation of public policies.

The findings indicate that effective public policies are those adapted to emerging forms of crime, particularly cybercrime, economic crime, and transnational crime. The integration of modern technologies, the use of statistical data, and the adoption of evidence-based approaches significantly enhance the efficiency of interventions. At the same time, the study highlights the need for an integrated approach that combines preventive and control measures, taking into account the social, economic, and cultural factors that contribute to criminal behavior.

In conclusion, public policies represent a fundamental pillar in combating crime; however, their effectiveness depends on their adaptability to societal changes and on strong institutional cooperation. The development of coherent, flexible, and prevention-oriented strategies is essential for ensuring long-term social security and stability.

Keywords: crime, public policies, prevention, control, security, institutional cooperation, strategy, cybercrime, intervention, evidence-based policies.

ROLUL POLITICILOR PUBLICE ÎN PREVENIREA ȘI COMBATEREA CRIMINALITĂȚII

Abstract

Criminalitatea reprezintă un fenomen social complex și dinamic, influențat de transformările economice, tehnologice și culturale ale societății contemporane. În acest context, politicile publice joacă un rol esențial în prevenirea și combaterea infracționalității, constituind principalul instrument prin care statul intervine pentru menținerea ordinii și siguranței publice. Lucrarea de față își propune să analizeze rolul și eficiența politicilor publice în gestionarea fenomenului infracțional, evidențiind atât dimensiunea preventivă, cât și cea represivă a acestora.

Metodologia utilizată este una calitativă, bazată pe analiza literaturii de specialitate, a documentelor strategice naționale și internaționale, precum și a studiilor empirice relevante. Sunt examinate principalele tipuri de politici de prevenire, respectiv prevenirea primară, secundară și terțiară, precum și măsurile de control și sancționare a criminalității. De asemenea, lucrarea abordează importanța cooperării interinstituționale și a parteneriatelor dintre sectorul public și cel privat în implementarea eficientă a politicilor publice.

Rezultatele analizei evidențiază faptul că politicile publice eficiente sunt cele adaptate la noile forme de criminalitate, în special la criminalitatea informatică, economică și transnațională. Integrarea tehnologiilor moderne, utilizarea datelor statistice și adoptarea unei abordări bazate pe dovezi contribuie semnificativ la

creșterea eficienței intervențiilor. Totodată, se subliniază necesitatea unei abordări integrate, care să combine măsurile de prevenire cu cele de control, având în vedere factorii sociali, economici și culturali care favorizează apariția criminalității.

În concluzie, politicile publice reprezintă un pilon fundamental în combaterea criminalității, însă eficiența acestora depinde de capacitatea de adaptare la schimbările societale și de colaborarea între instituții. Dezvoltarea unor strategii coerente, flexibile și orientate spre prevenire este esențială pentru asigurarea securității și stabilității sociale pe termen lung.

Cuvinte-cheie: criminalitate, politici publice, prevenire, combatere, securitate, cooperare instituțională, strategie, criminalitate informatică, intervenție, politici bazate pe dovezi.

Introduction. Crime constitutes one of the most complex and enduring challenges faced by contemporary society, producing direct consequences for public security, economic stability and social cohesion. In recent decades, processes associated with globalization, rapid technological development and increased population mobility have contributed to the diversification and growing sophistication of criminal phenomena. Consequently, alongside traditional forms of offending, new manifestations of crime have emerged, including cybercrime, economic crime and transnational crime, all of which challenge conventional mechanisms of prevention, control and repression.

Within this dynamic context, public policies represent essential instruments through which the state seeks to address, regulate and manage the criminal phenomenon. Such policies comprise a coherent set of legislative, institutional and social measures designed both to reduce the underlying causes of crime and to ensure an appropriate response to unlawful conduct. Their role is therefore not confined to the punitive or repressive dimension of criminal justice, but also extends to the development of effective preventive strategies, grounded in the identification of risk factors and in the promotion of social values capable of discouraging deviant behaviour.

The relevance of an integrated approach to public policies in the field of crime has become increasingly apparent, particularly in light of the complexity of the phenomenon and the interdependence of the factors that generate and sustain it. Interinstitutional cooperation, community participation and the use of modern technological instruments constitute key elements for enhancing the effectiveness of public interventions. At the same time, the adoption of an evidence-based policy approach allows public decision-making to be grounded in empirical data and facilitates the continuous assessment of the outcomes achieved.

The aim of the present paper is to analyse the role of public policies in the prevention and control of crime, with particular emphasis on the main mechanisms of public intervention and on their effectiveness in the current social and institutional context. The paper also seeks to identify the challenges posed by emerging forms of crime and to underline the need to adapt public strategies to the evolving realities of contemporary society.

The research hypothesis is based on the premise that the effectiveness of public policies in the field of crime depends on their capacity to adapt to social and technological transformations, as well as on the degree of cooperation among the institutions involved. From this perspective, the development of flexible, integrated and prevention-oriented policies represents an essential condition for ensuring public security and long-term social stability.

The Theoretical Framework of Public Policies in the Field of Crime. Analysis of public policies in the field of crime requires an understanding of the theoretical foundations on which such policies are based. Public policies may be understood as the set of decisions and actions adopted by state authorities in order to manage issues of general interest, including the prevention and control of criminality. In this field, they include

legislative, institutional and social measures aimed both at reducing risk factors and at sanctioning unlawful conduct.

An essential feature of public policies is their dynamic character, determined by social, economic and technological developments. Accordingly, their effectiveness depends on their capacity to adapt to new forms of crime and to incorporate modern mechanisms of intervention. The policy-making process involves several stages, including the identification of the problem, the formulation of solutions, implementation and evaluation of outcomes. These stages allow public interventions to be continuously adjusted and improved.

With regard to crime prevention, the specialised literature generally distinguishes between three main levels of intervention: primary, secondary and tertiary prevention. Primary prevention is directed at the population as a whole and seeks to reduce the general causes of crime through measures such as education, social development and the strengthening of community values. Secondary prevention focuses on vulnerable groups and aims to reduce the risk of involvement in criminal activities through specific support and intervention programmes. Tertiary prevention is addressed to individuals who have already committed offences and seeks to reduce reoffending through rehabilitation and social reintegration measures.

The theoretical grounding of public policies in the field of crime is also influenced by several major criminological perspectives. Strain theory explains criminality through the existence of tensions between socially accepted goals and the legitimate means available for achieving them. Social control theory emphasizes the role of social institutions, norms and interpersonal bonds in maintaining social order and preventing deviant behaviour. Rational choice theory, in turn, argues that individuals may engage in criminal conduct following an assessment of the potential costs and benefits of such behaviour.

The theoretical framework therefore highlights the need for an integrated approach to public policies, capable of combining preventive measures with mechanisms of control and social reintegration. Such an approach is necessary given the complexity of the criminal phenomenon and its continuous transformation within contemporary society [1].

Materials and methods applied. The present paper employs a qualitative research methodology, appropriate for the analysis of complex social phenomena such as crime and the public policies associated with it. The choice of this methodological approach is justified by the need to gain an in-depth understanding of the mechanisms through which public policies influence the prevention and control of crime, as well as of the broader context in which such policies are designed and implemented.

The main method used is *documentary analysis*, consisting of the examination of specialised literature in the fields of criminology and public policy. Relevant academic works, scientific articles and reference studies addressing the relationship between public policies and the criminal phenomenon were analysed. This approach enables the identification of the main concepts, theories and explanatory models used in the field.

The research also includes the *analysis of official documents*, such as national and international strategies on crime prevention and control, institutional reports and public policies adopted at governmental level. These sources provide a practical perspective on the manner in which policies are formulated and implemented, as well as on their effectiveness in different institutional and social contexts.

Another important methodological element is *comparative analysis*, used to highlight the similarities and differences between various models of public policy. This method contributes to the identification of good practices and effective solutions applied in other states or institutional contexts.

The data used in the research are secondary in nature, being drawn from public and

validated sources, which contributes to the credibility and relevance of the information analysed. Data interpretation is carried out through a critical approach, aimed at highlighting both the strengths and the limitations of existing public policies.

The methodology adopted allows for a complex and coherent analysis of the role of public policies in the prevention and control of crime, providing a solid basis for the formulation of conclusions and recommendations. At the same time, it emphasizes the importance of an interdisciplinary and evidence-based approach in the development of effective public policies [2].

Discussions and results obtained. **I. The Role of Public Policies in Crime Prevention**. Public policies play a fundamental role in crime prevention, constituting one of the main instruments through which the state seeks to reduce the factors that facilitate criminal behaviour. Crime prevention represents a proactive approach, aimed at limiting risks before offences are committed and thereby contributing to the maintenance of public security and social stability. In this respect, primary prevention focuses on reducing the general causes of crime through education, social development and inclusive public measures, while secondary prevention is directed towards vulnerable groups exposed to a higher risk of involvement in criminal activities.

A first essential dimension of public policies in this field concerns the implementation of preventive measures. These may include educational programmes, public awareness campaigns and social initiatives designed to reduce both individual and collective vulnerabilities. Education has a central role in shaping social values and norms capable of discouraging deviant behaviour, while also contributing to the development of a social environment based on responsibility, civic participation and respect for the law.

At the same time, public policies aim to identify and support vulnerable groups that may be exposed to a higher risk of criminal involvement. Early interventions, such as counselling programmes, social integration measures and educational support, may contribute to reducing the likelihood of unlawful conduct. From this perspective, cooperation between public institutions, non-governmental organisations and local communities is essential for the effective implementation of preventive strategies.

Another important element is the use of modern technologies in crime prevention. Surveillance systems, data analysis and digital tools can facilitate the rapid identification of risks and enable timely intervention by the competent authorities. Moreover, the use of statistical data contributes to grounding public policies in empirical evidence, thereby increasing their relevance and effectiveness. However, the use of technological instruments must be accompanied by adequate safeguards, in order to ensure respect for fundamental rights and to prevent excessive or disproportionate forms of intervention.

The role of the community is also essential in preventing crime. Citizen involvement in preventive activities, including community safety programmes, contributes to strengthening the relationship between the population and state institutions. Such cooperation facilitates the early identification of social problems and increases public trust in the authorities, which is a necessary condition for the legitimacy and effectiveness of public policies in this field.

Public policies aimed at crime prevention must therefore be integrated, flexible and adapted to current social realities. Their effectiveness depends on the capacity to combine educational, social, institutional and technological measures, as well as on the level of cooperation between public authorities and the community. A well-founded preventive approach can contribute significantly to reducing crime and to creating a safer and more stable social environment [3].

II. Public Policies in Combating Crime. Combating crime represents an essential

dimension of public policies, aimed at identifying, sanctioning and deterring criminal conduct. Unlike prevention, which has a proactive character, combating crime involves direct intervention by state institutions after antisocial acts have occurred, with the purpose of restoring the rule of law and protecting society.

A central role in this process is played by repressive measures, which include criminal and administrative sanctions imposed on persons who violate the law. These measures perform both a punitive and a preventive function, as they seek not only to sanction unlawful behaviour, but also to discourage potential offenders. The effectiveness of sanctions depends on their proportionality, the promptness of their application and the public perception of the certainty of punishment.

The institutions involved in combating crime, such as the police, prosecution services and courts, have complementary responsibilities in the enforcement of the law. The police are responsible for preventing and investigating offences, prosecution services coordinate criminal proceedings, while courts ensure the adjudication of cases and the application of sanctions. The effective functioning of these institutions depends on professionalism, adequate resources and compliance with the principles of the rule of law.

Interinstitutional cooperation is a key element in the effective fight against crime, particularly in the case of complex offences, such as economic or transnational crime. Cooperation between national and international institutions facilitates the exchange of information, the coordination of actions and the strengthening of intervention capacity. In this context, partnerships with international organisations and specialised agencies become particularly important.

Another important aspect is the use of modern technologies in combating crime. Digital tools, integrated databases and information analysis contribute to the rapid identification of offenders and to the efficiency of investigative processes. At the same time, technology supports the development of data-driven strategies, allowing for a more effective allocation of institutional resources.

Public policies aimed at combating crime must therefore be coherent, effective and adapted to the complexity of the criminal phenomenon. Their success depends on the proper functioning of institutions, cooperation among them and the integration of modern technologies. A balanced approach, combining sanctions with reintegration measures, contributes to reducing crime and strengthening social security [4].

III. Contemporary Challenges and Emerging Forms of Crime. Recent developments in contemporary society have produced significant transformations in the structure and manifestation of the criminal phenomenon. Globalization, rapid technological development and increased population mobility have facilitated the emergence of new forms of crime, which are more complex, more sophisticated and often more difficult to control. These changes generate major challenges for public policies, which must constantly adapt in order to respond effectively to new risks.

One of the most relevant emerging forms of crime is cybercrime. This category includes offences such as online fraud, cyberattacks, data theft and illegal access to information systems. The transnational nature of these offences, together with the difficulty of identifying perpetrators, requires the development of modern strategies based on international cooperation, specialised institutional capacity and the use of advanced technologies. At the same time, the increasing dependence of society on the digital environment amplifies vulnerability to such threats.

Organised transnational crime also represents an increasingly serious threat, involving complex criminal networks that operate across national borders. Drug trafficking, trafficking in human beings and smuggling are only some examples of criminal activities

that require a coordinated response at international level. The absence of effective cooperation between states may limit the capacity of authorities to intervene and may facilitate the expansion of these criminal networks.

Another important aspect concerns the continuous adaptation of offenders to control and sanctioning measures. Criminal actors increasingly use modern technologies and innovative methods in order to avoid detection, which requires public authorities to constantly develop new strategies, investigative tools and institutional responses. This dynamic relationship between criminal innovation and institutional reaction highlights the need for flexible and forward-looking public policies.

Emerging forms of crime therefore underline the necessity of flexible, integrated and risk-oriented public policies. Their effectiveness depends on the capacity to adapt to rapid social and technological changes, on international cooperation and on the responsible use of modern technologies in the prevention and control of crime [5].

IV. Assessing the Effectiveness of Public Policies. The assessment of the effectiveness of public policies in the field of crime prevention and control represents an essential process for optimizing state intervention and adapting it to social realities. The analysis of effectiveness involves examining the results achieved in relation to the objectives initially established, as well as identifying the factors that influence the success or limitations of such policies.

A first evaluation criterion is represented by performance indicators, such as the crime rate, the level of recidivism, the degree of public perception of safety and the effectiveness of law enforcement processes. The decrease in crime rates and the reduction of recidivism are relevant indicators of the effectiveness of public policies; however, they must be analysed in correlation with broader social and economic factors. Moreover, citizens' perception of public safety represents an important element, as it reflects the level of trust in state institutions.

Another essential aspect is the analysis of good practices, which allows the identification of effective models of intervention. Examples of evidence-based policies implemented in various states demonstrate the importance of using statistical data and empirical research in the development of public strategies. Community-oriented prevention programmes, the use of modern technologies and the strengthening of interinstitutional cooperation are factors that can significantly contribute to increasing the effectiveness of public policies.

However, public policies also face a number of limitations and vulnerabilities. These include insufficient financial and human resources, lack of coordination among institutions and the difficulty of adapting to emerging forms of crime. In addition, certain policies may have only a limited impact if they are not correlated with social and economic measures aimed at addressing the underlying causes of criminality.

The continuous evaluation of public policies is therefore essential for identifying such deficiencies and for adjusting strategies accordingly. In this respect, the adoption of an evidence-based approach allows public decision-making to be grounded in concrete data and increases the effectiveness of interventions. Constant monitoring of outcomes and the involvement of relevant stakeholders contribute to improving the quality and coherence of public policies [6].

Conclusions and recommendations. The analysis carried out in the present paper highlights the essential role of public policies in the prevention and control of crime, as they represent one of the main instruments through which the state intervenes in order to maintain public order and social security. The complexity of the criminal phenomenon, intensified by globalization and technological development, requires the adoption of coherent, flexible and adaptive strategies capable of responding to new social realities.

One of the main aspects emphasized in this paper is the importance of maintaining a balance between preventive and repressive measures. Crime prevention, through education, social intervention and support for vulnerable groups, contributes to reducing the underlying causes that generate criminal behaviour. At the same time, control measures based on law enforcement and the effective sanctioning of offenders remain essential for deterring and limiting the criminal phenomenon.

The paper also underlines the crucial role of interinstitutional cooperation and partnerships between the public and private sectors. Combating crime, especially modern forms such as cybercrime and transnational crime, cannot be carried out effectively in the absence of close cooperation between institutions at both national and international levels. The exchange of information and the coordination of actions are decisive factors in increasing the effectiveness of public interventions.

Another important element is the use of modern technologies and the adoption of an evidence-based approach. The integration of statistical data, information analysis and digital tools contributes to the development of public policies that are more effective and better adapted to contemporary realities. Continuous policy evaluation makes it possible to identify deficiencies and to adjust strategies according to the results achieved.

With regard to recommendations, it is necessary to develop integrated public policies that combine preventive and control measures, taking into account the interdependence of social, economic and cultural factors. It is also necessary to strengthen institutional capacity through the allocation of adequate resources and the continuous professional training of personnel involved in the prevention and control of crime.

At the same time, international cooperation should be intensified, and the legislative framework should be adapted to emerging forms of crime. The promotion of education and social awareness should remain a priority, as it contributes to the development of a culture of legality and responsibility.

In conclusion, the effectiveness of public policies in the field of crime depends on their capacity to adapt to societal changes and to integrate modern mechanisms of intervention. A strategic approach based on cooperation, prevention and innovation is essential for ensuring long-term public security and social stability [7].

Bibliographical references

1. Merton R.K. (1968). Social Theory and Social Structure. New York: Free Press.
2. Garland D. (2001). The Culture of Control: Crime and Social Order in Contemporary Society. Chicago: University of Chicago Press.
3. Wilson J.Q., Kelling G.L. (1982). Broken Windows: The Police and Neighborhood Safety. Atlantic Monthly.
4. Schneider S. (2015). Crime Prevention: Theory and Practice. Boca Raton: CRC Press.
5. Tonry M. (2011). Punishing Race: A Continuing American Dilemma. New York: Oxford University Press.
6. Muncie J., McLaughlin E. The Sage Dictionary of Criminology. London: Sage Publications, 2013.
7. Tonry M. Thinking about Crime: Sense and Sensibility in American Penal Culture. Oxford: University Press, 2004.
8. European Commission, EU Crime Prevention Strategy. Bruxelles, 2020.
9. United Nations Office on Drugs and Crime (UNODC), Handbook on Crime Prevention Guidelines. Viena, 2010.
10. Loader I., Walker N. Civilizing Security. Cambridge University Press, 2007.

Culegere și paginare computerizată. Bun de tipar 29.06.2026. Formatul 60x84/8. Tipar offset.
Coli conv. de tipar 129.24. Imprimată la tipografia Departamentului editorial poligrafic
al Academiei „Ștefan cel Mare” a MAI, mun. Chișinău, str. Gheorghe Asachi nr. 21